C32 17.

Nil dictum quod non dictum prius

OR THE

CASE

OF THE

Government

OF

ENGLAND

ESTABLISHED by LAW.

Impartially Stated, and faithfully Collected from the beſt Hiſtorians, Preſident of former Ages and Authority of RECORDS.

By *W. D.* Eſquire.

Cicero *de Invent. p.* 50.

Ea ſapientia & virtute majores noſtri fuerant ut Legibus ſcribendis nihil ſibi aliud quam ſalutem atque utilitatem Reipublice propoſuerunt; Ideo à Legibus nihil convenit Arbitrari niſi quod reciprocè conducit proficiſti quoniam ejus cauſa ſunt comparatè.

LONDON,

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Præmium Lectori.

I Hope Reader without miſtake I may aſſert this as the aſſent of all the Societies of Men, within this Kingdom how ever ſelf diſtinguiſht, that they allow of Government as neceſſary in order to their peace and ſafety. And that they moſtly pretend to be unanimous in their acquieſcence and ſubmiſſion to the Eſtabliſh't form of Rule within this Realm, conſiſting of the three Eſtates. The King, the Lords, *and* Commons. (*The* Romaniſts *who would introduce the moſt deteſtable ſpiritual Tyranny of the Pope, and the Enthuſiaſts who adore their own deluſions only excepted*) *yet many of thoſe who ſo plauſibly and familiarly aſſent unto the Text do extreamly diſagree and differ in the Comment, and ſtudy to frame*

unto themselves Arguments and Axiomes to support either Prerogative *or* Liberty *(two happy Terms in Union, but defended and asserted as two Extreams are Irreconcileable and equally ruinous and Impolitick) to serve and gratifie particular fancy Interest or Design, without making a due Provision and Regard for the General Good and Safety. And farther palliating their Excesses or Defects under plausible and fair pretences, insinuate and disperse their mischief, sometimes authorizing their Reasoning and Discourses from Forreign Rules and Maxims falsly introduced, and without due consideration worse applyed.*

If the prerogative of the King, overwhelm the liberty of the People, it will be turned into Tyranny, if liberty undermine the Prerogative it will grow into Anarchy.

OR else from humor and design (or by some more secret influence corrupted and perverted) seem earnest to recommend or rather obtrude upon us a resemblance and pattern of a Corrupt Monarchy (from the best temper'd one except our own before the use of States of France *was laid aside) to the double Tyranny of Popery and Arbitrary Power.*

NOR

NOR is there mistakeless who so far endeavor to lessen and abridge the Royal Power of the MONARCH, that they place all Soveraignty in the empty name, and scarce the shadow of a Parliament, not rightly either knowing differencing or fitly applying the Power, justly and distinctly belonging to that great Counsel or Assembly.

State super vias Antiquas---- *is an infallible direction, and not to be neglected in our conduct in the Sacred or Civil Government.*

Omnem divini humanique moris memoriam abolemus cum nova peregrinaque patriis & priscis preferimus. Titus *liv. lib.* 8.

To that purpose I offer the ensuing Transcript, observing so far as I am capable the Method of that unerring Court the Parliament, and the daily practice of all our Benches of Record, who imitate and consult the actions, and follow the Steps and Presidents of their Predecessors, as their best rule to guide them. According to their Copy I have endeavor'd to Transcribe, and from the best assistances in my ill

furniſh't ſtudy; I have labor'd to aſſert and explain the Juſt and Rightful Power of Parliaments, in a Method hitherto unuſed though I hope fairly warranted by our known Records, or fully evinced by the Teſtimony of allowed Hiſtorians.

THERE is yet one peculiar Tribe who arrogate an almoſt infallible power, in Authorizing or Approving the Limits and Methods of Authority and this Jeſuited Maxime--Summa enim eſt ratio quæ pro religione facit *muſt ſupport this Eccleſiaſtical political Machin, which they ſet up to be* jure divino *or reduce to a kind of Pupil-age to their Hierarchy, according to the different deſign, intereſt and direction of the Workmen, for they are not without the taint of politick Schiſm, each one being captivated their own Apophthegmes; and twine and dandle the* Royal Ball *with ſuch unskilful and pedantick palmes, that 'tis moſt unſafe to commit the Government to ſuch inexperienc'd, ſuch unapproved Arbitrators.*

TO ſettle Authority on it's Juſt Baſis, *and to wipe off the adulterate Varniſh to ſettle it in it's natural and re-*

of

ligious Luſtre and Beauty, is the deſign of the beginning of this Enſuing Tranſcript, ſo that we may after with greater aſſurance and reaſon admire, the wiſdom, Moderation, Chriſtian Prudence and Conſtancy of our Kings, Nobility and commons who have both by Preſident and Precept left us unerring rules to eſtabliſh Authority and Obedience: The true meaſures to give Cæſar his due: and for our walking in our inoffenſive liberty being aſſured to us.

Si nolumus Leges Angliæ mutare. In rebus nobis conſtituendis evidens utilitas eſſe debet ut ab eo jure recedatur quod diu equum viſum eſt.

W. D.

IN this diſcourſe of Government, I ſhall firſt give it's definition, and then conſider it in

1. The State of Nature.

2. Of Religion, and in it whether any Temporal Power be conſtituted at this day *jure divino*, by either Preſident or Precept in Holy Writ that is applicable unto us.

3. Make ſome obſervations of the Laws and Conſtitutions of our own Kingdom the better to direct me in my duty in my proper ſtation.

Government is an orderly conſtituted Power for publick good.

Orderly to prevent Anarchy and Confuſion.

Conſtituted Power to prevent Uſurpation.

For *Publick Good* to prevent Tyranny and Oppreſſion.

I ſhall paſs by all the Tedious controverſies of the ſeveral forms, and reſt ſatisfied that what ever form is practical and neceſſary under all the different compellations does infallibly, endeavor to aſſert this Fundamental and undeniable Maxime. *Quod ſalus Populi eſt Suprema Lex.* It is *jus Gentium ſeu Naturæ. Quod naturalis ratio, inter omnes homines conſtituit, & apud omnes peraque cuſtoditur*, for 'tis certain the Fundamental and natural cauſes of political happineſs in all Governments are the ſame, from the principle of ſelf preſervation Men framed the *Jus humanum*. The Municipal

Laws, the Laws of particular Nations, and the ſeveral and determinate ſanctions, that concern this or that Individual Government State or People, have either received their unprov'd Eſtabliſhment, from refined reaſon and uſeful experience, or elſe have been impoſed by Incroachment, Tyranny, and Uſurpation, and are in this laſt State no longer binding than while the Government is inabled by ſuitable Methods to exert their obedience.

All Governments and Societies of Men do in proceſs of long time, gather an irregularity and wear away much of their primitive inſtitution; it has been the Wiſdom of all ages from undoubted right in nature, to renew at fit periods thoſe errors defects or exceſſes, that have inſenſibly crept into the publick adminiſtration, to bruſh the duſt off the Wheels, and oyle them again or if it be adviſable to chooſe a ſet of new ones.

This reformation is moſt eaſily, and with leaſt diſturbance to be effected by the Society it ſelf, no ſingle Man being forbidden by any Magiſtrate to amend their own manners. And much more *All Societies* have the liberty to bring themſelves within compaſs, But if Men themſelves ſhall omit their duty in this matter, the only juſt and lawful way remains by the Magiſtrate, who having the greateſt truſt and intereſt in preſerving the publick welfare had need care to redreſs in good ſeaſon, whatever corruptions, that may endanger and infect the Government. Otherways if the Society (or Magiſtrate) it ſelf ſhall be ſo far from correcting

resting its own Exorbitances, as to defend them even to the offence and invasion of the Universality, this work neglected falls to the peoples share (from which God defend every good Government) for though all Commotions be unlawfull, by this means they prove unavoidable.

IN all things that are insensible there is nevertheless a natural force alwaies operating to expel and reject whatsoever is contrary to their subsistance. And the sensible but bruitish creature heard together as if it were in Council against their common inconveniences, and imbold'ned by their multitude rebel even against Man their Lord and Master.

THE common people in all places partake so much of sense and nature that could they be imagined and contrived to be irrational yet they would ferment and tumultuate at last for their own preservation; yet neither do they want the use of reason, and perhaps their aggregated Judgment discerns most truly the Errors of Government; for as much as to be sure, they are the first that smart under them. In this only they come to be short sighted, that though they know the Diseases they understand not the Remedies, and though good Patients are ill Physitians.

FOR as the true stress and force of all Laws lie in their aptitude for the General good of the people, so no farther obligation is implied than as the same be of Utility to the publick. Neither does the Opinion lead to Atheism, but proceeds rather from

honourable Opinion concerning God, That he could not Institute Government to the prejudice of Mankind, or exact obedience to Laws that are destructive to Society.

THEREFORE so long as the Magistrate shall provide Laws that appear usefull in the experiment, the whole people will stand by him to exact obedience, from the refractory, and persue them like a Common Enemy. But when they become unprofitable they expire by universal neglect, and without repeal grow obsolete.

NOW even in this state God may be truly said Providentially to constitute the Magistrate to Dominion, and the People to Obedience: Happy had it been for Prince and People had they never changed this plain and easie rule, for though there may appear less Majesty and State than in a Terrible & Arbitrary power. The other method's safe, the parts are uniform and regular, the Constitution Natural, all parts so poized and fitted in a just Mathematical proportion and relation each to other firmly knit, and by such unerring policy united, its *Basis* is immovable, its Structure is impregnable, its Aspect grave and venerable.

AT our entry into the Consideration how Government is establish'd in Religion, we cannot but observe how that some by an Interested Error have taken up a vain Custom, for one cutteth a Tree out of the Forest, and decketh it with Silver and with Gold, and in place of a Governour erect an Idol.

—— Quo tantum vertice ad auras
Aerias quantam radice ad Tartara tendit.

And the better to beget it adoration have ſtampt it with a new impreſſion called, *Jus Divinum*. Be it allowed,

If to do Good they Jus Divinum *call,*
It is the Grand Prerogative of all.
If to do Ill unpuniſht be their right,
The ſame's not granted the great King of night.

Let his Holineſs the Pope who arrogates an univerſal temporal Dominion, and the other Monarchs (who in my Judgment are equally intitled to this plea) determine how to uſe it, how they may in groſs divide, or ſub-divide the term, to ſerve their individual Intereſts and Deſigns. The Popes claim as firſt Inventor with the reſt of his Monopolies will be defined to be infallible, and appropriated with the reſt of the Patrimony of S. *Peter* by that ſelf-intereſted order. And I am confident though he may imbelliſh and adorn the Crowned Heads of his Royal Children with the too oft miſapplied additions of moſt Chriſtian, and moſt Catholick, *&c.* he will reſerve that Character as a peculiar divine inſcription for his Infallible Crown.

'TIS poſſible it had not been (or yet may not be) all-together uſeleſs by thoſe who ſo much Deifie the Magiſtrate to publiſh a Reſolution whether Religion was intended to be ſubſervient to Government, or that Government was eſtabliſhed to com-

ply with the principles and dictates of Christianity. A learned Gentleman of this Age has asserted the *Turkish* Policy to admiration, who Calculate their Religion so advantageously to Government, that it is wholly subservient and accommodated to all the occasions and circumstances of that Empire.

Marvell's Histor. Essay. p.1.

But if we will comport our selves according to the pattern of our blessed Saviour, let us know that though he came in the form of a Servant, and permitted to the Kings and Emperors the use of their Dominions, he thought it good reason to retain his own Religion within his own Cognisance, and exempt its authority from their Jurisdiction. In this alone he was Imperious, and did not only practice it himself against the Laws and Customs then received, and in the Face of the Magistrate, but continually season'd and hardned his Disciples in the same confidence and obstinacy, he tells them they shall be brought before Kings and Governours for his Name, but fear them not, he will be with them, bear them out, and justifie it against all opposition; not that he allowed them hereby to violate their duty to the publick by any resistance in defiance of the Magistracy, but he instructed and animated them in their duty to God in despight of suffering.

BUT to return from the digression, and that we may try the strength and truth of the Assertion by an unerring rule (which will not only teach us true obedience, but will also regulate and give to Power its

just

juſt extent) let us ſubmit the difference to be determined by evidence of Sacred Writ. And without gratifying humour or indulging ſence, in order to a true ſearch of what we ought to know, let us enquire if this *Jus Divinum*, if this holy, heavenly, Grand Prerogative has its Warrant and Commiſſion by either Pattern or Precept in the Old or New Teſtament, ſo as to authorize any Perſon lawfully at this day to uſe the claim. And to clear the point we muſt run through the ſeries of the *Jewiſh* Original and Story for a Pattern, as well as the Goſpel Inſtitution to find our Rule, or Precept.

WHETHER the *Jewiſh* People and their Regiment will make a Preſident for us, let us firſt conſider them in their original, I hope it is no hereſie to place the Creation of Mankind in the work of the Sixth day, *Gen.* 1. having the authority of *Moſes* to that purpoſe, and to aſſert Mankind was created as other Creatures by the power of God's Word.

NOR to inſinuate from the ſecond Chapter of the ſame Book, (a Chapter intentionally and of ſet purpoſe deſigned by *Moſes* after a ſhort recapitulation of the work of the Creation in the firſt Six days, to give the account of the diſtinct Original of *Adam* who was the Father of that people of whom he was to write his Hiſtory,) that the ſtate of *Adam*'s diſtinct formation and perticular election is the burthen of that whole Chapter; for God had not only finiſhed the General work of the Creation, as is above ſpe- *Gen.* 2.

cified, but after he had made up his account, had closed his Book, and solemnized his rest, then after in a different style he says, that God *Formavit Adam de limo terræ (non verbo) sicut lutum est in manu figuli*, (as *Jeremiah* the Prophet alluding to this matter explains it, and *Isaiah* calls God *plastes ejus*) *& spiravit in faciem Adami spiritum vitæ tulisse eum in Paradisum, &c. plantaverat autem Dominus Paradisum à principio in quo posuit hominem scilicet Adamam, sit dictum propter excellentiam.*

WE read of Three men that had a miraculous formation; *Adam*, to whom the Earth was Mother, God the Father, as in
Luke 3. the Genealogy of our Saviour, *Who was the Son of Henos, who was the Son of Seth, who was the Son of Adam, who was the Son of God:* by Formation not Creation.

Gen. 18. 2. *Isaac*, to whom *Abraham* was Father, God the Mother, *deserant enim Sarah fieri muliebria*, and *Isaiah* calling the Sons of *Isaac*, *ait se portavisse in utero suo & gestavisse in vulva sua.*

3. *Jesus Christ*, to whom the Virgin was Mother, God the Father.

BUT it is only pertinent to my purpose that it be proved that *Adam*, by special election of God, was the Father and Founder of the *Jewish* people only, who by a
Deut. 7. 26, 27. Deut. 10. farther election, the Lord their God had chosen to be a precious people unto himself above all people that are upon the Earth. Behold Heaven, and the Heaven of Heavens is the Lord thy God's, and the Earth with all that therein is; notwithstanding the

Lord

Lord set his delight in thy Fathers to love them, and did choose their Seed after them, even you above all people, as appeareth this day. Gen. 15.

THE Land of *Canaan* elected of the Lord, promised to *Abraham* became the lot of their inheritance, 'tis not as the Land of *Ægypt* from whence you came, *&c.* but the Land whether you go to possess, it is a Land of Mountains and Valleys, and drinketh water of the rain of Heaven. This Land does the Lord thy God care for the Eyes of the Lord thy God are alwaies upon it from the beginning of the year even to the end of the year. Deut. 11. 10.

HAVING proved the *Jews* our supposed Pattern elected in their National Collective Body, elected in their inheritance and possession, we will now consider what kind of Rule, and what Method for Government God was pleased to provide for that chosen People; by his peculiar assignation and not appliable to any other Nation under Heaven.

A necessity of Government, rather then any durable establisht Form may be inferred from the variety of their Administration. Their first was Oeconomical or Paternal, a Government proper in nature to such a narrow Empire for they were the fewest of all People; *& illos seperavit Deus in hæreditatem, de Universis Populis Terræ*: and that they might be incorrupt in their generation, as well as pure in their profession. They were prohibited to make Marriages, Deut. 7. Kin. 1. 8. Levit. 20.

Cove-

Covenants or even to shew compassion vnto other Nations.

WE read of no alteration for near 2460 years, and but a very short and concise Historie of that great revolution and tract of time, I fear we may most justly take up the lamentation of *Esdras, cur lex patrum nostrorum interiervit & constitutiones scripta nusquam habeantur, positum est igitur seculum in tenebris & habitatores ejus sunt sine lumine quoniam lex tua ex usta est quamobrem nemo sit qua a te facta sunt, vel qua incipium fieri opera.* WE are only insured that what we have from that Divine Penman *Moses*, is all a sacred truth (though I choose to call his works now extant commentaryes rather then his Historie)

Eldra. 4. l. Cap. 14. v. 20.

THE description of their Lawes is writ *velocicalamo* and the Character so dim, we have much trouble to finde its Cypher.

Gen. 2. THAT Adam was not absolutely *sui juris*, we have the account of this first Law, *of all the Trees of the Garden thou mayest freely Eat, but of the Tree of Good and Evil, thou shalt not Eat of it*; The penalty is subjoyned *for in the day thou Eatest thereof thou shalt dye the death*, this is the first time Sin was punished by a Legal death or imputed unto man; there were Lawes for property, for observation of the Sabbath and for Sacrifice Cain and Able brought offerings unto the Lord; likewise the Law against shedding blood is evident by *Cains* lamenting himself to the Lord: my punishment is greater then I can bear, the search is farther unfrequented, the distance great, the light opacious,

Gen. 4. Gen. 26. v. 5,

opacious, and I not ambitious to be unwarrantably curious.

Moſes begins and *Joſhua* ends the period; 'tis ſuppoſed they acted by a Monarchical or ſingle Rule. The Government in the next dynaſty we muſt acknowledge authorized, by Gods ſpecial immediate Election, the Peoples choice not rarely anticeeding, or ſucceeding to atteſt their approbation, for Judges came next in place; the original of whoſe power was neither by inheritance nor abſolutely popular, for the Lord raiſed up Judges to ſuccor his people, to deliver them from the hands of their Enemies in all their exigence and extremity. The Lord ſtirr'd up a Savior to the Children of *Iſrael* and the Spirit of the Lord came upon him, and they acted in that Spirit and by that Power invincible that ſubdues all Enemyes according to the methods of his own diſpenſation without reſpect to the congruity of means as may be read in the 6. and 7. *Chap.* of *Judges.* Deut. 33. 9. Judg. 2. 16. Judg. 3. 9. 10.

THE *Jews* continued under this ſtate of Regiment for above Three hundred years, not without ſeveral Interregnums and Vacancies; in which their great affairs were managed by their Sanhedrim or Parliament, the Government being termed an Ariſtocraſie; tho in that time there is alſo pregnant inſtances of popular choice. And the People and Princes of *Gilead* ſaid one to another; whoever will begin the Battle againſt the Children of *Ammon*, the ſame ſhall be head over all the Inhabitants of *Gilead.* Jud. 10. 18. *Cap.* 11. 6. 29.

And they ſaid unto *Iptah*, come and be

our

Jud. 9. *Abimelick* Deut. 26. our Captain, and the Spirit of the Lord came unto *Iptah*; for yet God was their King, and they had not renounced the mutual Covenant or Stipulation made betwixt God and them.

THEY continued under divers viciſſitudes unto the days of *Samuel*; The Dictators power among the *Romans*, was not unlike this laſt mentioned both for continuance and deſign, choſen in the moſt extream and deſperate ſtate of things, the danger over the Dominions ended; *I will not reign over you, neither ſhall my Children reign over you, but the Lord ſhall reign over you*, ſaid *Gideon*.

Godwins Antiq. Jud. 8. 23.

'TIS not altogether impertinent to ſubjoyn Three lives from the argument to the Book of *Judges*, that the Churches of God maintained Battles for the maintenance of true Religion againſt Idolatry and ſuperſtition.

Next that Common-wealth or State is in great danger when God giveth not a Magiſtrate to retain his people in the pureneſs of Religion, and his true Service. And I think for what occurrs hitherto, we may as well fetch a Pattern for Plurality of Wives and Concubines as for any Government at this day. Entring upon the laſt Scene of this Dynaſty, *Samuels* ſtory, we find the people of *Iſrael* as the Spirit of the Lord had before ſuggeſted, unſatisfied with their preſent Government.

Deut. 17. 15. 16. *Samuel* was grown old (and though he had appointed his Sons Judges) all the Elders of *Iſrael* gathered together, and came to *Samuel*, beſpake their danger, or rather fear

fear of their Enemies; desired to be like unto other Nations, to have a King to go in and out before them, and fight their Battles. Here they rejected me saith the Lord, *Rex Regum & Dominus dominantium*, contrary to their mutual Stipulation. Thou hast set up the Lord thy God to be thy God, and the Lord hath set thee up this day to be a precious people unto him to make thee high, and that thou shouldst be a Holy people unto the Lord thy God. Deut. 26.

Oh Thrice and ever renowned *Samuel*, with thee I close this period, and propose thee a pattern to all Ages present and to come. That Prince that can live up to thy President, truly Coppy thy exemplar, be the Counterpart to thy Original shall ne'er be envied, the *Jus Divinum* of thy Charter. And he spake to all *Israel*, Behold, *here I am, bear record of me before the Lord; whose Ox have I taken? or whose Asse have I taken? or whom have I done wrong to? or whom have I hurt? or of whose hands have I received any bribe to blind my Eyes therewith, and I will restore it you.* Then they said, *thou hast done us no wrong, nor hast hurt us, neither hast thou taken ought of any mans hand.* 1 Sam. 12.

Samuels Sons might be reckoned under this Government, either by Dissent, or by Commission, being deputed Judges by their Father; but being rejected from the Catalogue, and noted under the essential incapacities for that Regiment; *They walked not in his way, but turned aside for lucre, and took rewards, and perverted judgment. Wherefore all the Elders of* Israel *gathered themselves together,* 1 Sam. 8.

gether, and came to Samuel, made his Sons Vices the Arguments for their removal from the Government, and desired they might have a King, &c. In all the establishments of the Dominion, hitherto we find the Magistracy to be *jure divino*, a chosen Government, for a chosen and elected people, a perfect Theocrasie, for hitherto had the Lord holpen *Israel*.

1 Sam. 7. 12.

THE persons succeeding in the next Dynasty, were by the same authority Assigned, Appointed, Elected and Instituted, that is, by Gods immediate and express direction: The Lord revealed to *Samuel*, saying, *To morrow I will send thee a Man of the Land of* Benjamin, *him shalt thou anoint to be Governour over my people* Israel, and after said, see, *this is the Man that shall Rule my people.* And *Samuel* anointed him, and the people gave their Suffrage and Consent in this joyful Acclamation; *God Save the King.*

1 Sam. 9. 16. 17.

SAUL thus elected, was the first that was stiled by the name of King over that People, and was not invested with an Hereditary Title; for the People went to *Gilgal* after their victory over *Ammon* to renew their Kingdom, and made Saul their King before the Lord; In little time after, in order to his deposition for not walking uprightly before the Lord; the Lord during his reign elected *David*, *Samuel* anointed him by express command; and the Spirit of the Lord came upon him. The Prophet leaves us mention that he told the People the duty of the Kingdom and wrote in in a Book, and laid up before the Lord according

1 Isa. 16. 1 Isa. 25.

according to the expreſs command of God in his Prophetical care of that Kingdom. *And when he ſhall ſit upon the Throne of his Kingdom then ſhall he write him this Law repeated in a Book by the Prieſts and Levites, that he may prolong his days in the Kingdom.* Here was an Obligation intimated lying on the King as ſolemn and ſacred as a Coronation Oath; And we may ſatisfy our ſelves the Allegiance of the People was comprehended in their ſtipulation before the Lord in *Gilgal*, they there offered Peace-offerings before the Lord at that Solemnity. Deut. 17. 17,18,19.

BE it here remembred, that tho the Children of *Iſrael* were gratified with the formality of a King by *Samuel*, by Gods appointment; God had not wholly diſintereſted himſelf from the Government and Conduct of their affaires, nor quit the care of their Welfare and Preſervation; for, both King and People were under a ſtrict Command and Obligation of Obedience. *To fear the Lord their God and Hear his voice, and not diſobey the word of the Lord* &c. *But if ye will not Obey the hand of the Lord ſhall be upon you and upon your Governours*; God wrought a Miracle at the delivery of this admonition, that it might work the better effect, and make deeper impreſſion both upon King and People; concluded in this ſharp and ſevere Denuntiation. *But if ye do wickedly you ſhall periſh both ye and your King.* A demonſtrative inſtance that God did immediatly intereſt himſelf and claime and exert the ſoveraignty and ſuperintendency in 1 Sam. 12. 14,15. 24, 25.

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particular over that ſtate is in that he both by Preſcript and Direction did provide in all neceſſary emergences of their temporal Adminiſtration, and in that he ſeverely rebuked King *Saul* in perſon for his Rebellion: And as a further Argument of his Authority and Diſpleaſure did primarily *& per ſe* authoriſe his depoſition: The Prophet *Samuel* by the ſpirit of the Lord reprehending the King ſayiug, *Rebellion was worſe then the Sin of Witchcraft.*

1 Sam. 15.

Tis certainly moſt apparent that under their ſtate of Theocracy. The Magiſtrate as well as People, were obliged under Covenants and Obligations of Allegiance unto God their chief, that the Sin of Rebellion was indifferently appliable to either, and as that Crime was committed only againſt God, as their equal Soveraign, ſo was the puniſhment there appointed by his eſpecial Aſſignation, both for the Sentence, and its Execution upon the Prince or People, who were to ſuffer by it. Neither is it eaſily inferr'd from Sacred ſtory (until the *Jews* became Conquered, and Tributory to other Nations) that the People were Arraigned for Rebellion under any morral or politick conſideration. Nor were thoſe Reſolutions or Actings which concerned the publick ſafety, or liberty, cenſured under that deteſtable doom, otherways their practiſes towards the Sons of *Samuel*, and the general defection of the Ten Tribes under *Rehoboam.* The murderous Aſſaſſination of *Ahab*, &c. could not have paſſed without being Stigmatized with that black and approbri-

ous

brious Character, which ſuch hainous diſſertions did deſerve. And it may not Improbably be ſuppoſed by the examples of their ſtory, that when the publick weal and intereſt came in conſideration or hazard that a ſtubborn expoſtulation with their mediate ſuperiors, was ſometimes and under ſome circumſtances allowed both juſt, convenient and practicable.

IN all the time, during the continuance of *Iſrael's* Monarchy, he ſent his Prophets and his Meſſengers riſing up Early, and Laboring continually to do his Meſſages & Errands, by threats, by invitations, by both the Methods of reward and puniſhment, in ſo much that the Volumes of the Prophecies, the Records of his care and tenderneſs, the Evidences of his Love, and Heavenly Clemency towards them, exceed for bulk and burthen, the whole books of the Chronicles and Regiſters of that once puiſſant flowriſhing and moſt redoubted Monarchy. The books of *Joſhua*, *Kings*, and Chronicles, are but Epitomes of their larger ſtory; by ſome are thought to be but *Apographs*: and ſcarcely can be called Originals; if we conſider the Authers to which they do referr, nothing more frequently accurring in thoſe Treatiſes then. *Ecce ſcripta ſunt vel in libris Nathan vel in libris Gad, vel in libris ſermonum dierum* Iſrael *& Regum* Juda *vel in verbis Jehu filij* Hanani, *vel in ſermonibus Hoſei, vel apud* Iſajam *Prophetam, ſuo illo libro Hiſtoriarum qui lumine caſſus eſt.* Or in the Acts of *Solomon* or in

the Book of *Samuel* of the duty of the Kingdom *&c.*

1 Sam. 13. 13. IT is farther apparent that *Saul* forfeiting his Allegiance loſt his Kingdom, thou haſt done fooliſhly in not performing my Commandments, and thy Kingdom ſhall not continue; the Lord only is, *Rex Regum & Dominus dominantium*, God calling himſelf the ſtrength of *Iſrael*, hath choſen him a Man after his own Heart, and Commanded him to be Governour over his People;

1 Sam. 15. 29.

Iſaiah 63. *Nam conglutinatur eſt dominus Judeis & Amavit eos, & elegit eos dominus qui dilexit eos, ut ſi natorum ſuorum Mater eſſet immemor judeorum tamen non Obliviſceretur Deus.*

GODS gracious promiſes to, and election of that People, began with *Adam*, renewed with *Abraham*, confirmed to *David*, God moſt aſſuredly did perform, and by his providence and power, tho not always by a like viſible meanes exerciſed his Dominion and Government over that People, untill the Scepter was to depart from *Judah*, which was the forerunner and demonſtrative Token of the *Meſſiah*. And then the Law-giver did depart from between *Judah's* feet.

GODS purpoſes were then accompliſhed, his promiſes then performed, the Earthly Kingdom of the *Jewes* did then receive its period and conſummation, the purpoſe and deſign of their Election in fulneſs of time manifeſted and diſcloſed, and all thoſe particular and extraordinary methods of Adminiſtration uſed to that People under the ſeveral diſtributions of Government intirely ceaſed

ceaſed, from the inſtances before alleged without running the tedious ſearch of their uncertain and variable ſtate for the ſpace of nine hundred yeares through the ſeveral viciſſitudes of their proſperous and unhappy fortunes, in their adventures, of Baniſhment, Captivity and Slavery; We may without doubt infer that their Government, at ſeveral times would afford a pattern to all equally as to any particular kinde of Magiſtracy and dominion, even to run the pattern to *Popiſh* Tyranny and *French* ſlavery, and from paralel Reaſon too; if we inquire the cauſe of their Captivity, for leaning to Idolatry, and forſaking the Statutes of the Lord their God.

BUT, conclude their Government a Theocracy, and under a particular election, their ſtate under circumſtances peculiar to its ſelf, and the matters and rules, for their tranſactions not tolerably to be applied to any Nation under Heaven, the precept being ever poſitively, ſtrictly directed unto them, who were Gods peculiar portion, and whoſe Lawes were confined to their own Tribes, as were their Allegiance and Religion? Their principle and command was to do this and live, and leaſt they might be ignorant of their *Agenda*'s, God gave them their infallible and unerring Rule, the Law, and by his immediate ſpirit did deſcribe and dictate the whole and intire ſanction and all things requiſite, for the obſervance in the Sacred, Civil and Military State both of Ceremony and Subſtance, for perſon or office for private or publick con-

cernment, and was ever in all exigences ready to encourage their endevours for his Service, and their own benefit. And to resolve their doubts in all things that were misterious, they were not without either his immediate directions and illuminations, or had such faithful messengers, the just interpreters and deliverers of his errands, that when their own, corruptions did not intervene to hinder, he was willing to be sought, ready and easy to be found by them.

THEIR Lawes were in part Mistical, and in part Moral, the Mistery called the pædagogy (the Types, Figures and Resemblances being all accomplished by the coming of our Blessed Saviour) were all abolished together, with the dissolution of their then present Temporal Government, and the promiss to *Abraham* began to Operate; *Benedicitur in te omnes Nationes terræ*, for then the *Gentiles* in persuance of Gods Eternal purpose were Adopted through Jesus Christ in himself, according to the good pleasure of his Will, the *Jews* were first entitled by election, and that by nature, the *Gentiles* by Grace or Adoption, *quæ sancta res est & beneficium naturæ imitatur.*

Gen. 12.

1 Ephes.

SO that upon the whole matter I conceive it evident, that neither the Precept, nor Pattern of that Nation will warrantably be accommodated to justifie the claime of any Government at this day to be *Jure divino*. Neither would I have the Prophetick Character

racter of a King, given by *Samuel*, mistaken for a Charter, 1 *Sam.* 8. beginning at the 10. *verse.*

I shall only make some short Observations from the aforegoing discourse in reference to that People.

I. That neither the Judges, nor the Kings of *Israel* and *Juda*, had authority or permission, to Introduce, Authorise or Promote Idolatry, or Superstition among their People; nor to innovate any thing against the expres Tennor of Gods command and monission, which was to be their Guid and Rule.

II. That the People under that state were not debarred of their natural right of power, in their extremities and dangers, to elect to themselves Rulers and Governors, such as they Judged capable to serve them, by the presidents of *Gideon*, *Jeptha*, and *Saul.*

III. That by the same inherent Right, where God himself had not made the immediate and possitive assignation, the People had right to judg and determine of the persons capacity to serve them, and consequently in the strength of that Right, might either accept or require one more agreable, by the president of *Samuel*'s Sonnes rejected, and *Saul* chosen, *Abimileck*, &c. Judges 9.

IIII, That by the same Right in nature, they had a power to exhibit their just complaints and present their grievances, which if not redressed they might renounce and

wave their Allegiance, and betake and ſubmit themſelves unto the dominion of another, by the preſident of the Ten Tribes.

V. This happy Kingdom thus eſtabliſhed and provided for, continued only entire for three Generations, then by Gods ſpecial order, the Ten Tribes revolted from the houſe of *David*. The People had their part and ſuffrage in that revolt, All the congregation of *Iſrael* came and ſpake to *Rehoboam*, ſaying, *Thy father made our Yoke grievous, now therefore make thou the grievous ſervitude of thy father and his ſore Yoke which he put upon us lighter and we will ſerve thee.* And the King after time of Conſultation anſwered them ſharply, by ill counſel; threatned to make their burthens greater, and whereas his father had chaſtiſed them with Rods, he would chaſtiſe them with Scourges. So when all *Iſrael* ſaw that the King regarded them not; the People anſwerd the King thus, ſaying, what portion have we in *David*, we have no inheritance in the Sonn of *Iſhaj*. to your Tents O *Iſrael* Now ſee to thy houſe *David*, ſo *Iſrael* departed to their Tents and Submitted to the Rule of *Jeroboam*, where Princes are willful, or ſlothful, and their favorites flatterers, or time-ſervers, there needs no other inchantment to infatuate; yea, and ruine the greateſt Monarch.

1 King. 12. 3. 4. 13. 16.

Let us give Glory unto the Lord, who ha's aboliſhed the Pedagog of the Law, and brought us into the Glorious Liberty of the Goſpel, where now the Holy Spirit ha's brought us from a Carnal to a Spiritual

tual Service. The command is short: *Believe and be saved*, but what? Believe the promises made to *Adam* in Paradice, to *Abraham* in *Canaan*, the Tipes, Figures and Shadowes of, and in the Law of *Moses*, the exultation of *David*, the predictions of the Prophets, the Vision of *Symeon*, were all assuredly accomplished, in the birth of *Christ* thy *Saviour* and *Messias*; and next expres thy admiration, that this Sacred Truth should yet remaine a Stumbling Block unto the *Jewes*, or unto any foolishnes, after so many mentioned pregnant Testimonies, farther yet confirmed by the Magnificat of *Mary*, the Confession and Confusion of the Divel, the Attestation of Men, and Angels, and the Voice of God himself. We have not now under the new Christian Administration, any expres Revelation, no inspiration of a Prophet, no Unction of that Nature; as to the declaring of that Person, that is to Govern.

Only God has in general commanded and disposed men to be Governed, and the particular person Reignes according to that right more or les respectively, which under Gods Providence, he or his Predecessors have lawfully acquired over the Subject, and so is from God in a Providential Constitution, the nature of which is better and more reverently expressed by Princes (then some Divines who urge their *Jus Divinum*) by the Grace of God King *&c.*

'Tis undoubtedly enough that God ha's fortified him with a Divine law, that he may not be resisted, but his Administration

is humane, neither is it possible either for him to exact, or men to pay him more than a Civil Obedience in the Lawes he Constitutes; for a human Law can create only a human Obligation, and unless the breach chance to be against some Divine Law, I cannot see but that the offender is guilty not to God, but only to the Magistrate, and ha's expiated his offence by undergoing the punishment: The commands of Obedience and Submission are so firmly enjoyned, that I know but one dispensation from that General Rule, to Obey God rather than men (but then we must be Careful we do not forge our own warrant) in the 13 *Chapt.* to the *Romans* where the duty to the Magistrate is so fully described, and highly recommended, ti's never the less as to the Magistrate, said he, is not a terror to the Good work's, but to the Evill; 'tis enough to believe the power of the Magistrate do's most certainly issue from the Divine Authority, and that the Obedience due to that power, is by Divine command. And as it is unlawful to palliate with God, and enervate his Law's into a human only, and politick consideration; So it is on the other side unlawful, and unnecessary to give to Common, and Civil constitutions a Divine Sanction, and it is so far from owning of Gods Jurisdiction, that it is an invasion upon it. For it being demonstrable that a Religion instituted upon justice, between Man and Man, love to one the other; Yea, even their enemies, Obedience to the Magistrate in all human and moral

moral matters, without pretence or latitude for resistance; cannot so long as it is true to it self, in these things fall within the Magistrates jurisdiction: for while the Christian keeps to these precepts of his duty, he cannot fall under any Jealousie of State, as an ambitious and dangerous party, nor as a Malefactor upon any other account, deserve to suffer under publick severity, and in short Christianity rightly practised upon, it's own principles, would render all Magistracy Useless. The Monarch from an Ethnick, becoming Christian was not invested with a greater power, nor the subjects Obedience Alter'd by their Government in Religion.

SO I come to my next consideration of the particular Government of our own Kingdom.

AND here we may premise, that this Nation had never attained that happy temperature of Policy, that at this day guides it, were there not some *Primum mobile*, some finger of Divine providence that has ever kept one constant motion in all variety of state transactions for though we must attribute the passing of many excellent Laws to divers of the wise and good Kings and Queens of this Realm (the proper work of the representative body to form them) yet to no one or all of them can we ascribe the honor of that wisdom and goodness, that has hitherto continued to us the Enjoyment and Benefit of our Laws and Liberties.

THE

THE Character of the brittiſh Government is dark. Monarchical it was, and we believe the Nation was improved extreamly by the Roman Conqueſt made upon that People, it made them tractable and Manſuet; it taught them Arts, and Learned them the Methods of Civility. It improved their Policy, and reduced their ſcatter'd Dominion and Strength into one Province, ſuffering them the enjoyment of their own
Sped.55.4. Laws, ſaving their ſervice to their *Roman* Empire.

Succeeding times grew worſe, the Empire was imbroiled, and the often Changes, and unruly alterations, did not moderately affect this ſtate; and tho the Clergy at that time began to be admired as Oracles (letting them ſway, what was free from the Cogniſance of the *Roman* Magiſtrate) and probably they then were buſie enough to frame their Synods, and Adopt them, the repreſentative Body of the Kingdom, In the mean while fettering the ſecular power, and tying the Arms of the civil Magiſtrate, at length their actings in their Synods, and Aſſemblyes; became liable to exception, being too much lifted up, or drawn
Gildas. aſide from the exerciſe of Juſtice or Religion.

The *Roman* Weſtern Empire doomed to ruine, left the *Brittiſh* ſtate in ſo weak a poſture, it had not force ſufficient to defend it's liberty, or ſecure it's ſafety, reſolves to venture for a Cure which perhaps proved worſe than the diſeaſe. Invites the *Saxons* to their ſuccor, (who made the weakneſs of their

Hoſts

Hosts the argument for their Usurpation of the Government) they were a free People governed by Laws and those made by their Voluntary Voting and Consent, not subject to any Arbitrary Power, and thereupon were call'd Free. *Hist. Ger. Bacon fol. 15.*

AT their first entry they defaced the splendor of the Brittish Church, and consequently divested their Synods of their Power, introducing and intermining the Laws and Customes of their Country, for publick Observation in the Constitution of King, Lords, and People. But after they had entertained some glimmerings of Christianity, *Austin* the *Monk* after call'd the *Saxon* Bishop, was deputed from the See of *Rome*, to become as it were a third Proprietor with King and People, but could obtain no more than to preserve a Moderation of the Municipal Laws towards the Cannon-Law. The *Saxon* Kings in the first exercise of Empire were too many and had not power beyond their Limits: The Churches Metropolitan was but one in all the *Saxon* Territories, so that he was stiled *alterius orbis papa*, and by degrees invested himself in the discharge of secular Affairs, till at last their Successors claimed it as part of the business of their Office even to the Jealousie of the Civil Power, for the *Saxon* Kings would never allow them power or preeminence above themselves, or their Great Council; and though they claimed by virtue of the Cannons the immediate sentence or disquisition in point of *Witchcraft*, *Bastardy*, *Marriages*, &c. They never executed the same *L. I. Ethelstan cap. 11. coun. Brit. 179.*

by

by uninterrupted right, until they were thereto Authorized *per commune concilium, & assensum omnium Episcoporum procerum comitum, & omnium sapientum seniorum, & populorum totius Regni & per preceptum Regis:* And notwithstanding all their pretences and designs to aggrandisement, they obtained no admittance into the *Saxons Mickelmote* or *Wittagenmote* (the true Idea of our Parliament subsisting of King, Nobles, and Freemen) for near 200 Years and it may be were then admitted as *Sapientes* not as *Prelates.* But a true instance of their design to controvert the Soveraign Power, may be collected from what they then promoted as current Divinity, and by artifice had made it a publick Law of State; that if the King defend not his People, and especially the Churchmen from injury, *nec nomen Regis in eo constabit, verum nomen Regis perdit.* At last they grew most intollerable, exceeded all allowance, flew at the Throat of Government, deposed and advanced even to the Royal Throne it self; not only out of sudden passion of State, but advisedly concluded for a Maxim, that the Election of the King belonged to them, as in the case of the Election of *Maud* the Empress, they did declare to all the World; and in which King *Henry* the 2. did also flatter them, keeping them in restraint until they accorded to vote for the Election of his Son to be his Successor.

Concil. Brit.

L. Sax. Ed. Cap. 17

Antiq. Brit. 150. Ibid. 145. Ibid. 127.

IT was then full time to regulate their insolence and ambition, and to that purpose about that time and after were the Common

Laws

Laws and antient Customes reinforced in that we call the Constitutions of *Clarendon*, which it may be are not so properly termed Statutes or Acts of Parliament, as Judgments in the great Counsel of the King and Peers, declaratory of what was antient Law and then promulged to fix limits to their disorder.

BUT to return, in this great Counsel of the *Wittangemote* in the *Saxons* time were transacted those we now call *Ardua Regni* in matters of Peace and War, Matters of publick defence and General Charge to do right according to Law and Custome, more especially to prevent injury by the King Queen and their Children; in short it was a Court of General use and unlimited extent made to rise and stoop according to occasion.

L. L. *Lam. Laws ub. fol.* 36. *Leg Ed. Lamb. Cubb fol.* 139. *Mirror. cap* 1. *sec.* 3

THIS Establishment of the *Saxons* was first assaulted and invaded by the *Danes*, who in their entrance shew'd much of the wrath of God and Man. Yet trenched not upon the Fundamentals of the Peoples Laws or Liberties; and after three of the *Danish* race for some short time had worn the *Diadem*, it reverted once again under the *Saxon* rule, until at length this antient famous Monarchy devolved into the possession of the *Normans*, entring this Island under the conduct of *William* Duke of *Normandy*, who put a Period to the other Dynasty and has left us to dispute how to resolve his claim.

SOME building their opinions on passionate notes of angry Writers invest him with the title of a Conqueror, and thence infer strange

ſtrange Aphoriſmes of State deſtructive to the Government of this Kingdom.

IN order to evince the contrary, conſider.

Mat. Paris p. 1. Antiq. Britt. Eccles. 76.

1. That he pretended other claim and title as Couſin and Heir to the Confeſſor.

2. As deſigned Succeſſor to the Confeſſor by his will, confirmed by the conſent and election of the Nobility, and of *Harrold* himſelf who in aſſurance promiſed his Siſter to the Duke in Marriage, the Pope on reference allowing of his claim againſt *Harrold* his Competitor.

3. His Coronation was ſolemnized after the antient manner, where he made a ſolemn Covenant with the People to obſerve thoſe Laws which were *bonæ, approbatæ & antiquæ Leges Regni*, to defend the Church and Church-men, to govern all the People juſtly, to make and maintain righteous Laws and to Inhibit all Spoyle and unjuſt Judgment. The People ſtipulated for their fealty: That as well within the Land as without, they would be faithful to King *William*, and in all places with all fidelity to keep his Lands and Honors, together with him and againſt all Enemies and Strangers to defend, which agreed with the tenor of the *Saxon* fealty only was ſumm'd up in fewer Figures.

Hoveden Eadm. Hiſt. li. 1. cap. 13. Mat. Paris in vit. Guil. Bacon. 116

4. Beſides the Oath of fealty he eſtabliſhed a Law of Aſſotiation that all Freemen ſhould be ſworn Brethren, to defend the Kingdom with their Lives and Fortunes againſt all Enemies to the uttermoſt of their Power. 2. To keep the peace and digni-

L. L. Ina. Lamb. Sect temp. 43 Eliz.

ties

ties of the Crown. 3. To maintain Right and Juſtice by all means without delay, and was ſo far from uſing the Power of a Conquerour, or Acting by the ſole Dictates of his own pleaſure, that he commended the Laws of the Confeſſor to his Juſtices, in the ſame Language they were wont formerly to be written, leaſt through ignorance the people raſhly might offend. 'Tis farther atteſted by another Author, the King had a deſire to Learn the *Engliſh Tongue*, that he might the better Know their Law, and Judg according thereunto.

Ingulph.

Mat. Patri. in frag. Guil.

5. In the fourth year after his Entry or Reign, he ſummoned a meeting of all the Nobility and Wiſe men to ſet down their Laws and Cuſtoms, which beſides the intention of Governing the Kingdom; according unto Law, doth ſtrongly portend that at that time he did allow the Legiſlative Power in the Parliament, in point of Right of Cogniſance and Judicature in General,

Specil. Pa. 5. Litchfield. Chron.

6. The authority to introduce if not to Change Laws, that this Council had in his time, may appear in the Act made for introducing of the Cannon Law, which farther evidences their authority in Church affaires, and that the Cannons had no influence but what they would allow them.

Spiceleg. 167.

Fox Martin lib. 4.

7. In matters of General Charge the King uſed the advice of this Council, as may appear by the Kings own Laws, in the Charge of armes laid upon the ſubject.

Ll. Guil. Cap. 58. Spicil.

8. In the Clauſe of Reſervation of the free ſervices of the Freemen of the King-

Ll. Guil. Cap. 55.

dom,

dom, they were made only to himſelf, and in Concluſion; ſaith, that their Lands were thus granted to them in inheritance of the King by the Common Council of the whole Kingdom. And ſo in one Act aſſerts the liberty of the Freemen, and of the repreſentative body of the Realm; ſo that however Conqueror this King was, he yet made uſe of the additional Power of Parliaments to perfect his deſigns, to ſecure his Claim; and to quiet the jealouſies of the People; ſo that if at any time the unquietneſs of the People brought the King to ſome thoughts of Arbitrary tule, and to ſhake off the Clog of *Saxon* Law; it was long er'e it ſtirr'd, and ſprang up too late to raiſe the title of Conqueſt, and witherd too ſoone to ſettle it. Nor were they Compellable to any other ſervice inconſiſtent with, nor to ſtand to any judgment different from, or contrary to, that of the Parliament it ſelf. So that the *Engliſh* man
Sp. 55. 4. Enjoyed this threefold Freedom. 1. In the ownerſhip of what he hath; 2. In voting any Law whereby that ownerſhip is to be maintained. 3. In having an influence upon the Judicatory Power that muſt apply it.

NOW If we but ſummarily follow the rule of the Lord Cook, (*judicis officium eſt ut res ita tempora rerum quærere*) we ſhall find 1, the Being or Original of our Parliament, to be very antient and unqueſtionable in ſubſtance, form and all neceſſary adjuncts. *Mulmutius* of ſome Call'd *Donwallow*

wallo did write two bookes of the Laws of the *Britains*. The one call'd *Statuta Municipalia*, the other *Leges Judicialia* (so they import in the *Brittish* Dialect, and may not improperly be Englished the statute and Common Laws) 441. Years before the Incarnation. In the Heptarchy of the *Saxons* they had their continuance, as in the stile of the Parliaments of *Ina* King of *W. Sax*: *Offa Merc. Ethelstan* of *Kent*; *hæc sunt judicia exonia, quæ sapientes Consilio* Athalstani *instituerunt, & iterum apud* Fresham, *& iterum apud ---- ubi hæc definita simul, & confirmata sunt* This Parliament as appears, was summon'd *Consilio Regis*; Prorogued in these words *iterum & tertia vice*; The Royal assent expresst by *Confirmata sunt*, and their dissolution *Definita sunt.*

THE *Saxons* had their Parliament as we, and their new Laws were made. *Cum consensu prælatorum Magnatum ac Totius communitatis*; or as others, *cum consilio Prælatorum Nobilium & sapientum Laicorum.* They call'd that great Assembly by several Names or Compellations, their *Mielemote* their *Wittagenmote prudentum conventus concilium*; *magnum concilium* &c. But after the entry of the *Normans*, *vetusto nomine*; *ex* Gallia *mutato Parliamentum dicitur.*

AND Though the Book of *Litchfeild* sayes, of the troublesome times of the *Danes*, that then, *jus sopitum erat in Regno Leges & consuetudines sopita sunt & prava voluntas vis & violentia magis quam judicia, vel justitia* *Litchfield Chron.*

 actitate

actitate fuerant; yet by the Bleſſing of God and a Good King (Commonly called St. *Edward*) the Laws were awakened, *exitatas reperavit reparatas decoravit, decoratas confirmavit*, which ſhowes the Good King *Edward* did not Originally give thoſe Laws, which *William* the conqueror, and his ſucceſſors have ſworne unto.

Ranulp. Ceſtr. l. 1. cap 50. Cod. 4. Fuſt. 457. 193.

Moreover in their time we find the Parliament, of King Canutus bore this Title. *Hæc ſunt ſtatuta Canuti Regis Anglorum, Danorum, Norwegorum venerando ejus ſapientum Conſilio ad Laudem & Gloriam Dei ac ſui regalitatem & commune commodum habito in ſancto Natali Domino apud Winton.*

9. Ed. 2.

So that the Words of the 9. *Ed.* 2. *Sciatis quod quum dudum temporibus progenitorum noſtrorum quondam Regum Angliæ in diverſis Parliamentis ſuis &.* Were not meant of the Eſtabliſhment of his immediate predeceſſor, for then *dudum, & progenitorum temporibus*, would have been incongruous and improperly applied: So that we may apply fitly the rule of *Fortiſcue, Regum noſtrum in omnibus Nationum & Regnum temporibus, eiſdem quibus nunc regitur legibus & conſuetudinibus regebatur, ut qui ſub uno Rege ſub una Lege Regerentur.* And having evinc'd this firſt thing by preſidents which tho in themſelves they are not of authority and proof to overthrow any new Law. yet they are good *Media* or proofes of illuſtration or confirmation, when they agree with the Text, and expreſs letter of the Law.

Fortescue de Dom. Pol. & Regal.

Alſo lib. Litchfield.

We

We will in ſhort, Secondly Conſider the ends of the Being of Parliaments. Firſt, which are *Subditos delinquendo declinandos. Hoc eſt ut diſtincta tam bonis Cautiſque legibus tam debita eorundem executione anticiparentur.* L. Cook.

2. *Ut tuta tranquillaque ſit vita hominum.*

3. *Ut fixis quibuſdam ſanctionibus ſanctiſque Judiciis jus unicuique fieret.* Fl. 12.

4. *Terminare dubitationes Judiciorum novis injurijs immerſis nova conſtituere remedia unicuique prout meruerit juſtitiam retribuere.* Accordingly the ſtatute of *Marlbrid: proviſum eſt concordatum & conſeſſum quod tam majores quam minores juſtitiam habeant & recipiant in Curia Domini Regis.* 52. H. 3. Marl. This may be ſufficient in this place to explain the General ends of it's Inſtitution. We are in the third place to diſcourſe of the POWER of the Parliament, to ſerve thoſe ends, which *Power* is threefold.

AND Firſt as it is the great Council of the Kingdom, what Rights and Power it hath under that Notion.

2. As it is the moſt ſupream Court of Judicature of the Nation and What matters come within it's Power and Cognizance as ſuch.

3. As it is the high and only Legiſlative Power of the Kingdom, and therein more particularly of the unlimited tranſcendency of it's influence and authority in occurrences of higheſt Concern of the Imperial

Crown and Realm, saying with the Lord
2 Inst. Cook: *Si vetustatem spectes est antiquissima si dignitatem est honoratissima si Jurisdictionem est Capacissima*, For the extent of it's Power take this General rule.

All places that are in subjection to the
5. Ed. 3. par. vol. par. 1. Mem. 25, Par. vol. H. 3. 30. Mem, 1. *Crown* of *England*, are subordinate to the Jurisdiction of the Parliament, as in the Case of *Ireland*, *quia* &c. *Rex vult quod omnia*
23. H. 8. Cap. 1. 4. H 5. Cap. 6 Rec. Irw. 42. Ed. 3. Mem 20. d----a 25. H. 8 12 Co. 4. Inst. Tit. Ireland. *brevia de Communi Jure qua currant in Anglia similiter currant in Hibernia &. Ut per eadem leges eos Regi & Deduci permittant & in omnibus sequantur.* That Law and Justice, *eadem sit tam Hibernicis quam Anglicis*, and that it shall be held as a Crown united to the Crown of *England*, and the Acts of that Kingdom have been confirmed in this, and General Laws shall there take place as if *Ireland* were particularly named.

In Parl. 33 Ed. 1. Plea de Insu. Jersey. The Parliament of *England*, have held Plea, and determined all Causes of Lands and Goods in the Isles of *Jersey* and *Guernsey*, part of the *Dutchy* of *Normondy*, and of our other territories, whilst we had any
14 Ed. 2. footing and possession in the Realm of France, and Committees have been appointed for Peticions in their Assemblys of parliament
27. H. 8. Cap. 26. Also in Temp. Henry the 8. Law and Justice was setled by Parliament to be administred in *Wales* as in this Kingdom &c. but before we discourse of the Parliamentary power according to the former distribution,

viz.

viz. of thoſe things that are the objects thereof.

We may Juſtly give this honor to our Nation, that no Conqueror ever impoſed his *new*, to the aboliſhing its ancient Laws. And it's undoubtedly with States as with Families, and Perſons, an uninterrupted Pedegree doth give luſture.

Moribus antiquis ſtat res Romana virique.

Privilegium amittit qui imbrobabili temeritate quod non accepit uſurpat, & ſua authoritate non legitime utitur ſed abutitur poteſtate.. Gratian.

IT will be neceſſary at our Entry to the following Matters, to give an account, by way of Repetition, of the conſtituent parts of our Government; and that I may the more effectually and the freer from diſpute perform, I ſhall give the Definition in the words of the moſt diſcerning Judge, the ever renowned King *Charles* the martyr, (the Diſaſters of which unfortunate Prince, the Age can never enough lament, who ſubmitting the unerring Sentiments and Dictates of his own Soul to be acted by the ill methods of weaker and worſe Counſel, ſuffered) may his royal Succeſſor avoid even the Jealouſies of a ſecond error; he thus expreſſeth it, That it is a Government under a regulated Monarch, the Legiſlative Power being placed in the three Eſtates, King, Lords, and Commons; and ſo long as the ballance hangs even between theſe three, and they keep within the due exerciſe of their Rights and Priviledges, all the Inconveniences incident to all other Governments, are provided againſt and ſecured: the binding Laws to this Kingdom are joyntly made by all three, and the Government according to theſe Laws, entruſted with the King.

Anſwer to the 19 propoſit.

Here is *multum in parvo*, every ſyllable of Weight and Moment, and when juſtly diſtributed, it ſhews.

1. The King is not *Sui Juris*, he is intruſted with his Power; for under a free and untutor'd Monarch, the nobleſt, worthyeſt, and moſt prudent men, with full Approbation and Suffrage of the people, have in their Power the ſupream and final determination of higheſt Affairs, *Quod principi placet legis habet vigorem, eas ſcilicet quas ſuper dubiis in conſilio diffiniendis procerum quidem conſilio, & principis accidente authoritate conſtat eſſe promulgatus.* The diſtribution of Juſtice, the Treaties of Peace and War, the Power of making Peers, of chuſing Officers, and Counſellors for State, Judges for Law, Commanders for Forts and Caſtles, giving Commiſſions for raiſing men, to make War abroad, or to prevent and provide againſt Inſurrections and Invaſions at home, Benefit of Confiſcations, are Royalties belonging to the Monarch, *&c.* For it is beyond queſtion, reaſonable, that the Magiſtrate whoſe charge it is to ſee to our Perſons and Eſtates, is to be honoured with moſt elaborate and perſonal Courtſhip, and with large Sallaries and Stipends, that he himſelf may abound in thoſe things, whereof his legal Juſtice and watchful Care gives us the quiet Enjoyment; ſo that both by Cuſtom and Conſent of Parliament his Prerogative is highly favoured and adjuſted: for the Kings Prerogatives are rather beſides the Law than againſt it, and when they are directed to right ends for publick good, they are not only concurring Laws, but even Laws in Singularity and Excellency.

Ran. Glan. temp. *H.* 2.

Anſwer to 19 Propoſit.

But

But ſovereign power is a thing ſo ſacred, that to handle it otherwiſe than tenderly may tend to Sacriledge, and to ſpeak of it otherwiſe than reverently, a kind of Blaſphemy; and becauſe vulgar Capacities are not affected to judge of things to their intrinſick Quality and Vertue, I ſhall be ſparing in this point, gratifying therein my own Opinion, that ſovereign Power is beſt when had in tacit Veneration, than when it is prophaned by publick reaſoning Diſcourſe or Argument, ſo ſhall proceed to obſerve,

2. That the people have Rights and Priviledges.

3. That all together, only in Parliament, have power of making, binding Laws.

4. That the Government according to theſe Laws is intruſted with the King.

5. That all and every of theſe are under Obligation joyntly and ſeverally in their reſpective Capacities of Adminiſtration, to take care to provide for the publick Weal and Safety, *Ne reſpublica detrimentum capiat.* Our Predeceſſors had ſo ineſtimable a value of, and Kindneſs for our *Engliſh* Liberties, that they would not truſt their Guardianſhip with any under Heaven, but themſelves; Nay, though their Kings obliged themſelves by ſolemn Oath upon the Sacrament at their Coronation, *Quod eccleſia dei populuſque Chriſtianus veram pacem in omni tempore ſervent, Quod rapacitates, & omnes Iniquitates, omnibus gradibus interdicent, quod in omnibus judiciis equitatem & miſericordiam precipient, Quod perverſis legibus diſtractus bonas ſubſtituerent, & rectam juſtitiam in regno* Angliæ *excercerent, & quod ea quæ contra leges acta erant non ſolum pro minutillibus,*

ſed eiam pro ſolutis habenda erant: yet for more Caution, and a conſtant Aſſurance, and perpetual Satisfaction, that their Liberties and Rights were not invaded nor infringed, they procured not only this early Eſtabliſhment of *Edw.* 3. for frequent Parliaments (but diverſe others) whereby the King is bound by his Oath, to paſs all Laws that are for the good of his Kingdom, that for the maintenance of the ſaid Liberties, and remedies of Miſchief and Grievances that daily happen, a Parliament ſhall be held once every year, which Law was the *16 Car.* 1. in the Act for the triennial Parliament, declared to be in force; and after in the *16 Car.* 2. in the act for repealing of the former, it is recited, and becauſe by the ancient Laws and Statutes of this Realm, made in the Reign of King *Edw.* the Third, Parliaments were to be held very often. This Law of King *Edw.* ſomewhat in Abridgement of the uſage in the time of King *Edgar*, before the Conqueſt, which ordained, *Celeberrimus autem ex omni ſatrapia bis quotannis conventus agitur.* And it may be, this laſt was founded upon their dear bought Experience, and their Predeceſſors Ruines in the want of Parliaments, according to *Tacitus*, *Nec aliud adverſus validiſſimas gentes pro nobis utilius, quam quod in Communi non conſulunt rarus ad propulſandam commune periculum conventus, ita dum ſinguli pugnant univerſi vincuntur.*

25 Ed. 3. proviſ. 4 Ed. 3. 5 Ed. 3. 36 Ed. 3. 10. 1 *Rich.* 2. n. 95. 16 *Car.* 1. *Inter leg.* Edgar. *cap.* 5. *Tacitus in vit.* Agric. 206.

And that theſe Liberties of the People, were not as is ſometimes objected (by the Maligners of *Magna Charta*, and the peoples Birth-right) obtained by high hand, irregular, and rebellious Practices: beſides what is before alledged, I find them acknowledged by King *Hen.* 4. It

1 Hen. 4. *Rot. Parl.* n. 93.

was

was not the King's Will that any ſhould think, that by way of Conqueſt he would govern, or diſinherit any man of his Inheritance, franchiſe or other Right which he ought to have, nor out any man of what he had, or ſhould have, by the good Laws and Cuſtoms of the Realm.

Alſo, long before which time, I find them more at large expreſſed by *Henry* the firſt, in his Parliamentary Council held at *London*, 1106. *Ego vero Rex humilis & pacificus, vos in pace in antiquis libertatibus veſtris, prout crebrius jurejurando promiſi, geſtio confovere, & veſtris inclinando Conſiliis, Conſultius ac mitius more, manſueti principis, ſapienter gubernare, & ſuper his ſi proviſeritis ſcripta ſubarata roborare, & iteratis juramentis prædicta certiſſime confirmare, omnia videlicet que ſanctus Rex* Edvardus, *Deo inſpirante provide ſancivit, inviolabiliter jubeo obſervari.* The Charter of this King was produced by the Arch-Biſhop of *Cant.* in the 15. of King *John*, in his Parliament at *Windſor*, where they then renewed their claim, to have it ratified. *Mat. Paris pag.* 95.

It appears by the foregoing Preſident, 1. That the Priviledges and Liberties of the people, were acknowledged to be ancient, and their right; at leaſt in the time of the Confeſſor, called King *Edward*'s Laws: not that he made them, *Sed quia ex tribus legibus, Anglorum, Danorum, & Merciorum, unam legem communem edidit.* *Ranulp. Ceſtr. lib.* 1. *cap.* 50. *Cook* 4. *Inſt.* 193.

2. That the King had frequently ſworn, and would command their Obſervation.

3. He did acknowledge that acting with their Adviſe, he ſhould rule and govern with more Wiſdom, Safety, and Moderation, according to the ſaying of *Ph. Commines*. *Phil. Com. lib.* 5. *f.* 233.

Interveniente populi voluntate & assensu, crescit robur & potentia regum, & major est ipsorum authoritas & feliciores progressus.

The particular Priviledges of the two Houses are described in an Answer to a Petition of the Commons, 1 *H.* 4. That the King and Lords from all times have had and shall have of Right the Judgment in Parliament, *Saving*, that in Statutes to be made, or in Grants or Subsidies, or in such things as are to be done for the common profit of the Realm, the King will have especially the Advise and Consent of the Commons.

1 Hen. 4. *Rot. Parl. n.* 79.

It is to be noted, that a *Saving* in an Act of Parliament, does not create a thing *de novo*, only confirms that which was *in esse* before.

But that you may better comprehend what I mean by the Term Parliament, with reference to this great end, the publick good, for Methods sake, I will distinctly, and hope, warrantably, consider it to have a threefold Signification and Import.

1. As it is the great Counsel of the Kindom, to treat, advise, and consult, *de arduis regni*, and then it may be understood or meant of all three Estates, the two Houses, or one of them.

2. As it is the highest and most general Court of Judicature, then only of the King and Lords (unless in the discerning of the Priviledges of the lower House and of their Members, which lyes before themselves) and of matters that pass by Bill, which falls in the third Definition properly.

3. As it is the Legislative Power, then it is only entirely, and not to be admitted in fewer than all the three Estates, joyntly, King, Lords, and Commons.

The

The manner of the Parliamentary Proceedings was either joyntly with the King, or without him; and either joyntly by the two Houſes, as always in the matter of money, or where Gain ariſeth to the Crown by Grant or Subſidy, it moves from both, or elſe by each houſe ſeparately, and that ſometimes immediately by themſelves, ſometimes by their Committees.

They will yet be more familiar and better apprehended, if we conſider,

1. What matters of Fact have paſs'd from the King to the two Houſes for Debate, Counſel, and Conſent, which were moſtly for Proviſion or Prevention.

2. What Reſults of both or either Houſe, have mov'd to or with the King, thoſe concern Liberty, property, or a mixture of both, call'd Grievance.

3. That in ſome great and weighty caſes, they have acted all together.

But becauſe theſe Rules will be better underſtood by applying of Examples, we wlll take a view of the Imports of their general Writs of Summons: Secondly, of their particular Summons, that according to occaſion did expreſs the Reaſons of their Meeting. The Form of their general Summons runs, *Rex*, &c. *Quia nos de adviſamento & aſſenſu Concilii noſtri, pro quibuſdam arduis & urgentibus regni negotiis nos ſtatum & defenſionem, Regni noſtri* Angliæ, *& eccleſie* Anglicane, *concernentibus quoddam Parliamentum apud*, &c. *teneri ordinavimus & ibidem cum prelatis* &c. *dicti regni noſtri Colloquium habere & tractatum* &c. *eligi faceres* &c. *ad faciendum & conſentiendum hiis que tunc ibidem de communi*

Conſilio noſtro Anglie contigerint ordinari ſuper negotiis antedictis. Ita quod pro defectum poteſtatis hujuſmodi, ſeu propter improvidam electionem &c. dicta negotia noſtra infecta non remanent quoviſmodo.

The matters that are naturally obſervable from this Writ, are,

1. That the King ſummons them, *Adviſamento & aſſenſu concilii*, ſo that he rules not *mero Imperio*, but, in the Intervals of Parliament, acts by and with the Advice and Aſſent of his leſſer Counſel.

Cook 3. Inſt. 14. 2. They were to aſſemble upon certain difficult mattters inſerted and expreſſed in their Writs of Summons: which in the general, concerns his royal Perſon, his State and Government, the Safety and Defence of the Church and Nation.

4 Hen. 8. 8. 3. They were to have freedom of Election, Debate and Vote: the bringing Force to overawe the Parliament, not only made the Parliamentary Proceeding to be rend'red ineffectual, but inhanc'd the charge in the Articles againſt *Rich.* 2.

4. The Repreſentatives were to be fully impower'd to conſent to and ratifie what ſhould only be agreed in that common Counſel.

5. That without ſuch Power, the parliamentary Buſineſs could not be made perfect or conſummate.

But ſecondly, Theſe *arduæ Regni* will better diſcover themſelves, and have a more punctual Explanation, if we make ſome ſhort collection of matters and particular Clauſes, occaſionally inſerted into their Writs of Summons: ſo that we ſhall ſee what things have been exhibited to them

them, as proper for their Cogniſance, and as matters that deſerved their Counſel. *Cum Edvardns primogenitus noſter obſes ſuper deliberatione ejuſdem ſalubriter providenda, & plena ſecuritate, & tranquillitate pacis, & utilitatem totius Regni firmandæ &c. totaliter complendæ* for remedying the dangers that impend the Kingdom, and to obviate the ſame--To enable the King to make Wars for the recovery of *Gaſcoyne* ſurprized by the *French* King--*Pro negotiis tranſmarinis ad Salvationem Coronæ noſtræ & utilitatem communem regni noſtri--ſuper humationem corporis regis* Edvardi *genitoris noſtri* &c. *Quam ſuper ſolemnizationem noſtrarum ſponſalium & Coronationis noſtræ celebrand*--The *Scots* had broken League, committed Hoſtility, and made an Invaſion upon us, *nos dictorum* Scotorum *proteriam & nequitiam hujuſmodi, cum dei auxilio deprimere cupientes* &c. *& ſuper premiſſis finaliter pertractand. vos una nobiſcum opportunas vires extendere--expeditionem Guerræ noſtræ* Scotiæ *ſpecialiter tangentibus*--Concerning ſomething that remained undetermined or unreſolved in the laſt Parliament--to adviſe if he ſhould continue with his Army at *Newcaſtle*, to repreſs the *Scots* upon any occaſion of Offence that might be offered--Concerning his Paſſage into *France*, to defend his Territories and Dominion againſt the Invaſion or Uſurpation of the *French* King--To prevent an Invaſion from *Scotland*, and to give a diſpatch to ſome things left undone by the foregoing Parliament, by reaſon of the Abſence of the Members--About his Expedition into the Holy land, as alſo about the affairs of *Ireland*--To provide for the Quiet

49 Hen. 3. m. 11. d.
23 Ed. 1. m. 4. d.
24 Ed. 1. m. 4. d.
97 Ed. 1.
1 Ed. 2. m. 19.
2 Ed. 2. m. 20. d.
3 Ed. 2. idem.
6 Ed. 2. idem.
6 Ed. 2. m. 3. d.
7 Ed. 2.
16 Ed. 2.
18 Ed. 2.
1 Ed. 3.
6 Ed. 3.
12 Ed. 3.

et of the Realm, during his Abſence in foreign parts, in an expedition begun by their Ad-
14 Ed. 3. vice——To ſhew them the Reaſons why he inſerted and added to his Stile, the Title of King of *France*, to give them Satisfaction, that it ſhould not be in prejudice to the State, and right of the *Engliſh* Nation, but rather for Honour
16 Ed. 3. and Advantage——*Quia ſub ſpe felicis exitus*
18 Ed. 3, *agimus in remotis, veſtrum habere velemus auxilium, & Concilium providum, & feſtinum pro neceſ-*
21 Ed. 3. *ſario & ſalubre regimine regni noſtri* Angl. *Quod dictum Parliamentum non ad auxilla ſeu tallagia à populo dicti regni noſtri petenda, vel alia onera eidem populo imponenda, ſed duntaxat pro juſtitia ipſi populo noſtro, ſuper damnis & gravaminibus in-*
34 Ed. 3. *ferenda——Statum & bonum regimen——*
47 Ed. 3. *Qui in navigio & exercitio merchandizorum notiti-*
3 Hen. 6. *am habent meliorem——Qui nos jam dum in annis degimus teneris an pax & juſtitia ubilibet inter legeos noſtros debite conſervantur & exhibeantur, necne, decrevimus expedire.*

I need not enlarge to make any further Citation offered to the Debate and Conſideration of this great Counſel, you have the *ardua & urgentia regni*, atteſted and explained in the foregoing Preſidents, and they are ſuch as concern,

1. The Honour of the Kings ſacred perſon, the Inhumation of his Father, the ſolemnizing of his Nuptials, or his Coronation, for the Redemption of his Son in Hoſtage, or for the making an Addition to his Royal Stile and Title.

2. For the ſecuring Peace abroad by giving an account of Leagues, Wars, Expeditions, Invaſions, for raiſing or continuing Force accord-

according to Occasions, and publick Rules of Policy.

3. For securing Peace at home, more particularly in the Kings Absence, as may appear by this Clause inserted into the Summons, *Sciturі quod gratitudinem & ingratitudinem quas nobis in absentia nostra jam ostendi contingere, plusponderabimus, quam si fuerant dum presentes essemus, & ea curabimus juxta merita seu demerita compensare.* 16 Ed. 3. p. 2. n. 22.

4. To advise concerning the raising of an Army, and after, farther to consult of the Expediency, whether it should be continued, or reduced.

5. That they might provide wholsome Laws for themselves, without any design to raise Money, or impose Taxes, and to have Remedies for all illegal and male Administration, the Clauses too seldom inserted into those Writs, too rarely made the business of the Parliament, and oftener wanted and complain'd for, than supplyed, or remedyed.

So that by the foregoing Instances 'tis apparent, our Kings, in all Affairs of Weight and Moment, acted with the Approbation and Advise of his great Counsel, and esteem'd that way most advantageous.

1. To their State and Prerogative, to interest them in their Dispatch, *Nam quod omnes tangit ut ab omnibus approbetur, & ut communibus periculis per remedia provisa communiter obvietur, & quod provisa jacula minus lædent, & res vestra sicut ceterorum ejusdem regni communiter agitur in hac parte ideo,* &c. *ad tractandum ordinandum & faciendum qualiter sit hujusmodi periculis & excogitatis mali-* 24 Ed. 1. brev. 1 Hen. 4. brev.

malitiis per remedia Communia sit obviandum & hoc sicut nos & honorem nostrum, &c.

2. For their Security, better Dispatch, and Safety, *Quia expedit quod predicta negotia, que Salvationem & Defensionem dicti regni nostri sic contingunt salubriter & efficaciter, cum bona & matura deliberatione deducuntur & ut hujusmodi propositum nostrum felicem sortiatur effectum.*

Speech H. 1. prius. 29 Ed. 3.

'Tis here objected, that this Intercourse was of Favour and Complement, not from Necessity and Right; to which I answer.

1. That the King was both obliged by the Stat. of *Edw.* 3. aforementioned, and divers others, to call a Parliament yearly for the maintenance of Liberty, the remedying of Mischiefs and Grievances, and because that by the 1 *H.*4. 'tis agreed, that in all Statutes to be made for the general Good of the Realm, the King will especially have the Advise and Consent of the Commons; and the Reason is declared in an other Law, because the Commons have Right to vote and assent to all things for publick good, in Parliament.

Ed. 3. 1 H. 4. *Rot. Parl.* 2 Hen. 5.

2. Because the King could not assess or demand Aid or Supply in any Extremity of Occasion, without Assent in Parliament: and let it be regularly observed, that they parted not with any Supplies of Money, until they were advised of, and had agreed to the occasion of it's use, and sometimes did depolite it in particular Custody, or appropriate it to special Use, which the King could not invade or alter, without Consent in Parliament; And if it be allowed that the immediate, primary, visible Power, is in the King of

1 Hen. 4. 3 Ed. 2. Fortisc. 36. *Neque rex tallagia aut alia*, &c. *imponit, sine concessione totius regni in Parliamento.*

of making Peace or War, ſtrikeing Leagues, &c. Yet if the Parliament were unſatisfyed of the Expediency, or unconſulted in the firſt Motions or Occaſions, they frequently denyed Supplies of men or Money, as by ſeveral Authoriries interſperſed in the Diſcourſe is evidently manifeſt: and though the Commiſſions in thoſe Occaſions iſſue from the King, yet the Parliament gives the Life and Power to that Commiſſion: and be it a Commiſſion for Peace or War, for Land or Sea, it owes it's Succour and Encouragement to that Power, and the Exorbitances of Perſons ſo Commiſſionated, have ever been regulated by that Power, as in the great number of Laws made to that purpoſe, may and will appear: They added this farther Condition frequently before they opened the Nations Purſe, to have their Grievances diſcharg'd, *Le Roy pria d'aver une ayde de ſa terre & les bons gens grantera au Roy le 25 denier par cien Condition qu'il meiſt Conſeil & remedie en les articles auandits.* Amongſt others, they complain'd the King's Miniſters took their Goods without their Allowance or Conſent, that his Officers impoſed and took new Cuſtoms upon Wines, that the King had by his Proclamation advanc'd his Coyn beyond it's intrinſick Valew and Eſteem, that none would or durſt receive Petitions of their Complaints in Parliament, That Protections were granted whereby the Subjects were defrauded and delay'd of his juſt Remedy by Law, that notorious Offenders in Felonies were pardoned, and on ſlight and eaſie Terms, forgiven, whereby the Juſtice of the Kingdom, became perverted, all which were promiſed to be remedyed according to the ancient

18 Hen. 6. C. 18. 19.
4 Hen. 5. C. 7. &c.
7 Hen. 7. C. 1.
3 Hen. 8. C. 5.

cient Laws of the Kingdom, the next Parliament, and accordingly it decreed, that only the King's ancient Customs should be continued, Protections to none allowed, but such as were necessitated to be in the Foreign Wars, nor Pardons, but to Homicide by misadventure, or *se defendendo*, &c.

3. Because the King did not take upon himself singly to oppose or dispatch those beforemention'd, nor any other extraordinary Emergencies of State, *inconsulto Parliamento*, *Quia expedit quod negotia prædicta quæ salvationem & defensionem dicti Regni nostræ Angliæ sic contingunt salubriter & efficaciter cum bona & matura deliberatione deducuntur, scilicet, juxta Consilium Convocatorum, & quia radix & vertex Imperii in obedientium Consensu sita sunt.*

Brev. 29 Ed. 3. Spec. Car. 1. July 41. ante.

4. Because the King's Actings were only probationary, when the Publick Safety was in hazard, until adjusted by the Consent of this Great Council. *Non mirantes ex hoc quod stilum nostrum Consuetum mutavimus, & Regem Franciæ nos faciamus nominari, jam diversæ subsunt Causæ per quas hoc facere, necessario nos oportet, & quas Communitatibus ejusdem Regni nostri Angliæ ad dictum Parliamentum plenius exponeremus. Scientes insuper, quod nolumus nec intentionis nostræ existit, quod ex assumptione nominis & honoris eorundem prejudicietur aut aliqualiter derogetur, sed quod idem Regno uberius subveniatur, aut relevetur maturius, illud idem & pro securitate in hac parte, ad dictum Parliamentum, si opus fuerit, ordinabimus, quod juxta Consilium vestrum, ceterorumque Convocatorum viderimus opportunum.* The Parliament agreed the Title, but for

14 Ed. 3. p. 1. m. 3. d. Dier 94. Our King stil'd *Defender of the Faith*, per 35 H. 8. cap. 3. not by the Popes grant or revocation.

Rot. Parl. 35 H. 8. for the stile of King of Ireland.

for the Kingdom, it is too big to be garriſon'd by *England*, it will coſt *England* more to hold it than to have it. Take the words of the memorable Specch of Queen *Mary*, made in the *Guild Hall*, *London*, before the Lord Mayor and Citizens. And certainly, if I did either know or think, that this Marriage, (*viz.* King *Philip*) ſhould either turn to the danger or loſs of any of you, my loving Subjects, or to the detriment of any part of the Royal Eſtate of this *Engliſh* Realm, I would never conſent thereunto, neither would I ever marry whilſt I lived. And, in the Word of a Queen, I promiſe and aſſure you, that if it ſhall not probably appear before the Nobility and Commons in the High Court of Parliament, that this marriage ſhall be for the ſingular benefit and commodity of the whole Realm, that then I will not only abſtain from this Marriage, but alſo from any other. *Speed Chron.* 1114. 36.

And let it paſs for a Maxime, That a Kingdom is never more befool'd than in the ill Marriage of their King; evident in the marriages of *Richard* the Second, and *Henry* the Sixth, having thereby ruin'd themſelves, and, ſo far as poſſible, the Government of the Kingdom.

4. For that they were onely to treat of ſuch matters of which they had been before adviſed, and, upon the overture of any thing newly propoſed, they might pray leave to adviſe with thoſe that ſent them, and by the uſage of Parliaments, deſire Conference with their Countreys. *Cook*, 4. *Inſt.* 14.

5. For that for want of ſufficient Power in the Repreſentatives, the matters to be treated of remained unattempted and unperformed. *Ibid.*

6. That

6. That by reaſon of abſence, or inconſiderable appearance of the Members, the Affairs of the Nation could not, nor did not proceed: And they were warranted with Priviledges and Encouragements to enable them to make appearance. *Henry* the Third, *Anno* 1255. aſſembled his Parliament, to aſſiſt him with Supplies for his Wars in *Apulia*, but was denied. *Quod omnes tunc temporis non fuerant juxta tenorem Magnæ Chartæ ſummoniti, ſeu vocati, & ideo ſine paribus ſuis tunc abſentibus nullum voluerunt tunc reſponſum dare vel præſtare.*

Mat. Pariſ. 884.

20 *R.* 2. *n.* 8. The Commons required the King to ſend for ſuch Lords and Biſhops as were abſent, before they would enter upon the Buſineſs propounded to them.

2 *Car.* 1. 1626. It was reſolved, in the Caſe of the Earl of *Arundel*, that no Peer in time of Priviledge of Parliament, could be impriſoned, *&c.* or hindered from coming to the Parliament, without ſentence or Order of the Houſe, unleſs in Caſes of Felony or Treaſon, or in default of Surety for the Peace.

5 *R.* 2. *c.* 4. *Parl.* 2. The Precedents are numerous that juſtifie their Priviledge againſt pre-limited Elections, and that aſſert their unconſtrain'd Seſſion, and free Vote in Parliament.

St. Johns arg. Shipmon. p. 38. The Parliament of the 21 *Rich.* 2. was revoked by the 1 of *H.* 4. becauſe the Commons were not elected *prout mos exigit, ſed ſecundum Regiam voluntatem*, and held *viris armatis & ſagittariis immenſis*, and becauſe the King ſummoned the Lords, *ex parte* only, *viz. Dominos ſibi adherentes.*

7. That

7. That to obviate and to prevent these mischiefs, they were summoned by the strictest terms of Compellation, and urg'd by the most powerful Instances imaginable, *viz. Sicut statum Defensionem, bonum Regimen, commune Commodum, Ne quod absit per vestri absentiam, Expeditio negotiorum nostrorum retardatur, seu quovis modo differatur*; And two Manucaptors taken for the appearance of the Commoners *in majorem rei cautelam*. 11 Ed. 3.

2. 'Tis objected, the time for meeting and Prorogation are of Right in the King: to that I answer, That the King is obliged by the Laws to call a Parliament in such a space of time, as hath been before alledged, and is in this, as in all other matters of the Law, intrusted with the Executive Power, so that he has no unlimited Power, as to time, that being appointed and ascertain'd by Law and Statute, he has only Power within that time to make an Assignation for their Session; and for the power of Prorogation or Dissolvtion, when it exceeds Moderation, Kings have been no more gainers by the exercise thereof, than angry men are by their Passions.

The Judges and Lawyers that gave their Opinion to King *Rich.* 2. that he might dissolve his Parliament, and command his Lords and Commons to depart from thence, and said, they were Traitors that proceeded against his Will; were condemned of High Treason in the following Parliament of the 11 *Rich.* 2. which Law was confirmed in the 1 *H.* 4. 3. 4.

And if the King cannot by Proclamation, Writ or Letter, without just and lawful Cause

 assign'd

2 Ed. 3. *cap.* 8. 14 Ed. 3. *cap.* 14. 1 R. 2. *c.* 2. 11 R. 2. *c.* 9.

assign'd, prorogue, or adjourn the Term or sitting of any Court of Justice, much rather may it be supposed, the Custom of the Parliament sitting (to answer and dispatch all Petitions, to redress the Kingdoms and Subjects Grievances, and secure the Realm from Danger) is not to be disturbed or interrupted.

Monit. Brit. Car. 1.

For a King, when he calls his Parliament, should propose to contribute what in Reason, Justice, and Honour, and Conscience he can, to the happy Success of it; nor should it have any other design in him, than the general good of the Kingdome.

3 *Obj.* The King having the Power to Assign the Place of their Assembly, argues, their Disposition authoritatively in himself.

I answer, first, the Assignation of Place must be supposed to be within the Kingdom. 2. That many other things of this indifferent Nature, are necessarily left to the King by his Prerogative in infinite variety of Circumstances, to act by his Discretion, so we may consider of this Appointment for the meeting of the Parliament, which was most usual, where with most Conveniency he might consult them, and where as it were, *super visum periculi* might accommodate Expedients for Succor or Supply, so that they were convened at *York*, at *Shrewsbury*, *Canterbury*, &c. and other places, in the time of War or Expedition into or against *Scotland*, *Wales*, or *France*, and once for an Affront, the King and Parliament (then sitting at *Northampton*) rose, and went in their Body, and laid Siege to *Bedford* Castle, and there continued until they reduced the place, and overcame the Rebels.

O!

O! Happy Kings, when you discharge the Cares and Incumbrances, and Burthens of your Thrones, by the Assistance and Advice of your great Counsel, whose ready Zeal, and interested Care, did ever anticipate or accommodate your needs with Aids, Succor, and Supply, and by such unerring Methods serve you, you never failed of the desired Success of Peace and Glory.

Sed qui color albus erat nunc est contrarius Albo. Now we turn the Tables, we shall not always find so fair Accord, such quiet and peaceable Complyance, nor ready Motion to entertain and gratifie the People in the tender Consideration, Commiseration, and Redress of their Complaints and Grievances: to which my Purpose brings me, being to discourse farther of the Parliament, as the Nations great Counsel.

2. So shall consider, what both and either House (in the strength of the right, acknowledged to be in them, for providing for publick Good and Safety) have done in the matters that have passed or been presented from them unto the King, in reference to the Assertaining and Preservation of their Laws and Liberties; for during the Session of Parliament (the King may expect as most proper to the duty of Subjects, that propositions for Remedies of Evil, ought rather to come to him, than from him. *Mon. Brit. Cor.* 1.

Though the Government of a King is declared by his Actions yet the Government of a Kingdom is only manifested, by ancient Customs, Laws, and particular Acts of Parliament: In the World's Nonage, the Historian says, *Populus nullis legibus tenebatur arbitria potentiam pro* *Justin.*

legibus erant. Take the Polity and *England's* Government away, and it will be only a piece of Earth, wherein ſo many men have their Commorancy and Abode, without Rank or Diſtinction, without Property in any thing farther than Poſſeſſion; no Law to puniſh the murthering or robbing one the other, ſo that we may take up *Bracton*'s Rule, *Nihil tam proprium eſt imperii quam legibus vivere, quia ſine lege non poteſt eſſe Rex.* It is the Law that does intitle the King to the Service and Allegiance of his People, it intitles the People to the Juſtice and Protection of their King; and therefore 'tis not without Truth agreed as a Principle, *Major hereditas venit uni cuique noſtrum à jure & à legibus quam à parentibus.*

Bracton.

Plowd. Com. 236.

Law is the ſureſt Sanctuary that a man can take, and the ſtrongeſt Fortreſs to protect the Weakeſt of all, *Lex eſt tutiſſima caſſis, ſub clypeo legis nemo decipitur.* It is the Nations Rampart and regular Fortification againſt all forreign Force, it's Arſenel and Fortreſs, it gives both Weapons of Defence and ſure Retreat againſt the inteſtine Aſſaults of Violence and Commotion; and 'tis every man's Houſe and Caſtle, wherein he may defend himſelf, and oppoſe any man that ſhall invade him———But becauſe this is moſt elegantly expreſs'd in the ſence of a modern Poet, I will preſent the Lines.

Cook Inſt. 56.

Your Laws, your All, doth fence ſecure from fears,
Theſe kept, what need the uſe of Bandaliers.
Conſider well, 'tis Law that makes a King,
But th' Sword another to the Crown may bring.

Force

Force knows no distinction, longest Sword,
Makes Peasant, Prince, Lacquey above his Lord.
If Will be all that is design'd for Laws,
That Will inferiour may be to *Jack-straws*.
If greater Force him follows, there's no Right,
Where Law is wanting, if for Will men fight.
Best man alone is he, who is most strong,
Where no Law is, there's neither Right nor Wrong.
That Fence broke down and all in common laid,
Subjects may Prince, as Prince may them invade.
For they Preservers are of Majesty,
The Law destroy'd, Prince is no more than we.
And very vain would be the name of Crown,
If Statutes, Laws, if Parliaments were down.

So that when we reflect upon the foregone Discourse, and satisfie our selves, our Ancestors, whether we resolve our selves into the *Brittish* or *Saxon* Original, were Freemen, they were not otherwise so, then as they enjoyed the Liberty of their Laws, under their Governours or Kings, during the successive Continuance of those Powers. And it was an acknowledg'd Maxim in the *Saxon* Rule, That no great man nor any other within the whole Kingdom, may abolish the written Laws; for their Kings demanded their Prerogative, *ex pari*, by this following rule seeing I according to your Laws, allow you what is yours, do you so to me. King *Ethelstan*.

For the good estate of the Realm, King *Alfred* assembled the Counts, Earls, and great men of the Realm, twice by the year or oftner, for the right Government of the people of God, *Habet enim Rex curiam suam in Consilio suo, in Parliamentis* Horn *Mir. Just. l.* 3. *S.* 3. *p.* 9. *Fleta lib.* 2. *p.* 65.

liamentis ſuis, præſentibus Prelatis, Committibus, Baronibus, Proceribus, & aliis viris peritis, ubi terminati ſunt dubitationes, judiciorum & novis injuriis immerſis nova conſtituuntur remedia.

Fleta lib. 1. 17. The King hath a Superiour, namely, God, alſo the Law by which he is made King. Likewiſe his Court, his Earls, and Barons, becauſe they are call'd Counts, as being the Kings Fellows, and he who hath a Fellow, hath a Maſter, and therefore if the King ſhall be without Bridle, that is, without a Law, they ought to impoſe a Bridle on him; ſee King *Car.* 1. anſwer to the nineteen propoſitions.

Bract. lib. 2. cap. 17.

Mar. 1. cap. 1. King *Canutus* at his Election, obliged himſelf that he would be their lawful King to govern them according to the written Laws of God and the Nation.

K. Canutus 67. 'Tis true, ſome of their Kings ran into Exceſſes, but all was amended, either by the body of the People in their Wittagenmote, when they made Enquiry into the matter; or by the Princes fair Compliance, when Complaint was made, and ſo the Law was ſaved.

The *Norman William* at his Entrance, made neither pretence to conquer or violate the then received Laws and Cuſtoms, but gave full caution and his royal Compromiſe for their Obſervance.

The like Stipulations were often and ſolemnly repeated by his Succeſſors, and then *Magna Charta*, which was for the moſt part, declaratory of the principal grounds of the fundamental Laws of *England*, and was only a Supplement, not a new Declaration of the Laws, proem to 2. *Inſt.* p. 2. authorized to confine and aſſertain

tain the Regal by a legal Power: but evil Miniſters too often influenc'd the royal Ears with falſe Suggeſtions and Surmiſes, that thoſe Charters and Agreements would keep them down continually, make them poor, and in a ſtate of Pupillage, and either foreign Counſellors admitted, who acting by ſtrange adviſe made all things appear ſtrange and forreign, the King unto the People, or the People to their King; or elſe Favourites advanc'd to ſuch immoderate height, that they oretop'd both Law and Sovereignty, ſo became an Eye-ſore and a Grievance to the Nation; inſtead of Cement between King and people, begetting the occaſions of Offence, and thereby brought Ruine ſometimes to all, but ever to themſelves.

Extraordinary Advancement conferr'd on the Nobility, brings Honour to the Throne, but where they do belye their Titles for want of Worth and Uprightneſs, they make the Scepter ſtoop, by ſtirring up Envy in the Nobility, and Indignation in the people; for Advencements are bred from the Crown, but ordinarily fed from the people.

Now, if a Parliament or a Kingdom miſleade the King, at the worſt, he is but miſguided by his Counſel, but if he be drawn aſide by Favourites, he muſt thank his own Election; in the firſt he has but the leaſt ſhare in the Burthen, in the other, he muſt bear and ſuſtain the whole. *Mace.*

I Deſire here to beſpeak the Reader, that the Author's may anſwer for whatever may appear harſh or ungrateful in ſome following Tranſcripts, the Sceans indeed were very boyſterous

and rugged, and the Authors writ their Stories with a ſupercilious Brow, and a ſharper Quill: for ſome time after the Entry of the *Normans*, the times, like a rugged Sea, agitated by croſs Winds of arbitrary Vapours in and about the Throne, and by forreign Engagements from the holy Chair, made the true face of Affairs troubleſome and cloudy both for the Writer and the Reader.

It muſt be here acknowledged, that Princes have no ſhare or part in the ill of thoſe Actions, which their Judges aſſure them are juſt, their Counſellors, that they are prudent, and their Divines, that they are conſcientious.

Often, Parliaments is the fitteſt means to keep Correſpondence between the King and his People; whereas on the contrary,

Eikon Baſil.

The Intermiſſions or (which is full as ill) the undue Fruſtration of Parliaments, the unruly uſe, if not the abuſe, of Prerogative, diſſolving them, have often made ill times, and ſo have made ill Miniſters, for no State can be aſſured or confident of any publick Miniſters continuing longer good than whilſt he is accountable to ſomething that may put a check upon him. Though ſuch, in my Opinion, deſerve an *Athenian* Judgment, if they carryed themſelves well when time was, and after ill, they merit double Puniſhment, becauſe they are not good as they were, and becauſe they are evil as they were not. Aſſuredly, the ſtate and Condition of the ſeveral parts for which the Commons ſerve, their Diſpoſitions, Inclinations, Apprehenſions, their Fears and Jealouſies, are beſt known to their Repreſentatives in Parliament: they ſit there as the

the great Counſel of the Kingdom, and in that Capacity, it is their duty to take into Conſideration, the ſtate and Affairs of the Kingdom, and where there is occaſion to give them in a true Repreſentation by way of Counſel and Adviſe, with what they conceive neceſſary and expedient for them. *Remonſt. Parl. 3. Car 1.*

This is not their own, only Opinion of their Power and Duty, it was inculcated into his Parliament by King *James*, That it would be the greateſt Unfaithfulneſs, and breach of Duty to his Majeſty, and of the Truſt committed to them by their Country, that could be, if in ſetting forth the Grievances of the people, and the Condition of all the parts of the Kingdom, from whence they came, if they did not deal clearly with him, without ſparing any, how near and dear ſoever they were unto him, if they were hurtful to the Common-wealth. Under this Conſideration, we may be thankful for their Power, that they have a general Influence to inſpect and repreſent without a Limitation, ſo that to be exceſſively vitious, was not to be ſecure, neither are Facts of Treaſon, above the cognizance of the acts of Treaſon, and the Laws and Statutes of the Kingdom. *Speech of K. Jac. to Parl. 1.* *Speech of K. Jac. at Powder Treaſon.* *Speech Jac. 19 reg. 1621. proceed judicially, and ſpare none.*

The King ſhould be well pleas'd with his Parliaments Intentions, to reform what the indulgence of Times and Corruption of Manners may have depraved: nor ſhould he by his power, protect any againſt the Juſtice of the Parliament, nor ſhould any man be ſo dear unto the King, as whom he ſhould have the leaſt Inclination to adviſe either to withdraw himſelf, or deny appearing upon their Summons; for the greateſt means *Monit. Brit. Car. 1.*

Ibid. means to make the Parliament happy, is that the King on his part, and the Members thereof on theirs, lay aſide all Suſpition one of another.

How our Anceſtors and Predeceſſors carryed themſelves in Parliament, for the Maintenance and Preſervation of thoſe Laws and Liberties hitherto, in Safety tranſmitted to us--when leſs could not ſerve the turn, but by new ſevere Commiſſions to hear and determine Offences againſt their Liberties, publick eccleſiaſtical Cenſures, or Excommunications againſt the Authors or Actors of ſuch Violations, Accuſations, Condemnations, Executions, Baniſhments, that they proceeded by theſe Methods where their Parliamentary power to adviſe, was either neglected or invaded, and Acts of power were uſed againſt the Law, or Judgments of Law againſt their Liberties, will appear by ſome of the Preſidents next following, and other the Examples of this Tranſcript.

Epitom. Parl. 3. & 4. Carol. 192. T. F.

5 Hen. 4. n. 9. 10. The Commons having preſented to the King in Parliament, divers Grievances in the ill managing of his Revenues, the decay of his Houſes, Caſtles, and Parks, the great poverty and preſſure of his Subjects, and dangers of the Enemies thereupon, they moſt intirely and cordially prayed the King to conſider the eminent perils of all parts of the Realm, by reaſon of the Enemies and Rebels, of which they had News from day to day; and that as the Caſe then ſtood, if ſuch Miſchiefs were not ſpeedily and gratiouſly remedied and reformed in this Parliament, it might fall out upon ſudden Arrival of Enemies, or by ſome other means, this Parliament

ment must of Necessity be deported from by all, and dissolved, so as the Lords and Commons should never reassemble again, to redress the said Mischiefs and others, which God defend; And therefore, that it would please the King, considering the high Wisdom and Discretion of the Lords, and that they had knowledge of many perils and matters, which could not be so clearly known unto the King, that he would now in this present Parliament, charge all his Lords Spiritual and Temporal, upon their Faith they principally owe to God, and the Faith, Homage, and Allegiance, which they owe to our Lord the King himself, for the Aid and Salvation of themselves, and all the Realm, that the said Lords would counsel and shew him their Advise, and wholsome Counsel in this behalf, severally and entirely without Dissimulation or Adulation, having regard to the great Mischiefs and Necessities aforesaid, and thereupon, our Lord the King, most gratiously with his own Mouth, in full Parliament, charged and commanded as well the Lords as the said Commons, that they should do their diligence and shew unto him their good and wholsome Counsel in this behalf, for the Aid of him and all this Realm. And after, the said Commons in the same Parliament, made Request unto the said Lords, that seeing the King had given them such a Charge and Command, and that in so high a manner of Records, that they would do their diligence well and loyally, to pursue the same, without any Curtesie made between them in any manner, as they would answer before the most high, and before our Lord the King, and

to

to all the Realm, in time to come, and that the Commons themſelves would thereupon do the like on their parts; which Method, if King, Lords, and Commons would now purſue, and cordially, and ſincerely, promiſe and agree to do, without partial end or byaſs'd Intereſts, we might aſſure our ſelves a ſettled and happy Eſtabliſhment in Church and State.

Mat. Par. Hiſt. 232. King *John* having invaded the peoples Liberties, and oftentimes denied them the Confirmation of their Charters; in a Parliament, 1215. they produced the Charter of *Hen.* 1. containing certain Laws and Liberties enjoyed from the time of *Edward* the Confeſſor; in the defence whereof, they bound themſelves by Oath, to ſpend their Blood: the King having diſappointed them in three Parliaments, they withdrew themſelves from his Allegiance, and aſſembled themſelves at the Parliament at *Stamford*, in a poſture of Force; affirming, *Quod niſi rex incontinenti concederet, & ſigilli munimine confirmaret, Leges & Libertates ante recitatas ipſi per captionem ſuarum terrarum, & poſſeſſionum ipſum Regem compellerent donec ſuper præmiſſis ſatisfaceret competenter.*

Cook 4. *Inſt.*

The King in great Diſpleaſure, *Affirmavit juramento quod nunquam tales illas concederet libertates, unde ipſe efficeretur ſervus.*

Upon which, they betook themſelves to Arms, but the King being utterly deſerted, and purpoſing to attend a farther Opportunity for Repairs, to comply with the Neceſſities that were upon him, ſent Meſſengers to aſſure them, *Quod pro bono pacis & ad exaltationem ſui & honorem gratanter concederet Leges & Libertates quas petebant.*

After-

Afterwards in running Mead, he did confirm the ſame, diſpatching Orders and Inſtructions through the Kingdom, to command their due obſervance, inforced with this Clauſe, That to the beſt of their Power, they might or ſhould conſtrain the King, by ſeizing his Caſtles, *&c.* To perform the ſame, twenty four of the Nobility, were elected and deputed for the better Guarranty of the Obſervance; four whereof, were appointed for a Quorum, to appear before the King, to demand Repairs of any damage or Injury ſuſtain'd for want of their due Obſervance.

In the next year of his Reign, he added this Clauſe of Amneſtia or Oblivion, unto the Charter of Confirmation, *Sciatis* &c. *Conceſſimus Baronibus* &c. *qui contra nos ſunt, quod nec eos, nec homines ſuos capiamus nec impriſonemus, nec diſſeiſiamus de libero tenemento, vel liberis conſuetudinibus ſuis, nec ſuper eos per vim vel arma ibimus niſi per legem Regni noſtri vel judicio parium ſuorum vel per legem terræ.* *Par. rot. Pa. 1. do. 3. 16. Joh.*

This King who made the former Promiſes with an intent to break them, continued to incenſe his People, by diſcountenancing and diſcontinuing Parliaments, by Breaches made upon thoſe ſolemn Obligations he had made them, for the enſurance of their Rights and Liberties, and deſpairing of a Remedy; they at laſt waved their Allegiance, and betook themſelves to the Protection and Obedience of the King of *France*, and did by divers hoſtile Acts, invade the royal propriety and demeans, and reduc'd the King to the greateſt of Diſtreſs and Exigence, until he dyed under the preſſure of his unhappy Fate,

Lew-

Lewis in the mean time poſſeſs'd of the royal Chamber the Metropolis of this Empire. King *John* no ſooner dead, but with the new hopes of a rightful Government, they return'd to pay their Loyalty and Allegiance unto his ſurviving Son, an Infant, whom they elected for their King, outed the Forreigners out of the Land, and made a ſhort and abrupt Concluſion to that *French* Farce. This their Tranſaction, minds me of a Story in *Tit. Livye.*

The *Decemviri* had for a longer time than cuſtomary, diſcontinued the meeting, and uſurp'd upon the Power of the *Roman* Senate, the Neceſſity of a ſudden War, enforced the *Decemviri* to ſummons them to aſſemble, who broke up in diſcontent *re infecta.* The *Decemviri* undertake the War, the Succeſs was ill and fatal, *ne quid ductu aut auſpitio decemvirorum proſpere gereretur vinci ſe patiebantur.* They rather chooſe to ſuffer a preſent Diminution of Honour, than by Victory to continue, and gratifie the new Tyranny of their Maſters, and being remitted to their ancient Liberty, *Hoſtibus belloque gratiam habuerunt.*

Obſ. We may take this for an undeniable Truth, that when Differences and Difficulties ariſe or are begotten and fomented between the King and People, they always occaſion ſad Effects; 1. An Inclination to omit the frequent Intercourſe and Uſe of Parliaments. 2. A propenſity in the Members, to decline, to appear, or give Attendance: the firſt of theſe is for want of good Will in the King, (accurſt may they be that labour in thoſe ill Offices) and was ever fatal and deſtructive to good Government; the ſecond is for

for want of Zeal and Courage in the People.

If in diſtempered Parliaments it is good to withdraw, yet in diſtempered times, 'tis moſt neceſſary to meet, and gain a right underſtanding of all Parts: for if the proſpect be of violent and diſturb'd Agitations to enſue, 'tis ſafe, if not neceſſary, that every Eye ſhould be open, and Councils ready for every occaſion. And though the Parliament encounter many a ſhock the Body feels not, let it be conſider'd, tis better to endure with hope, than abandon all to infallible ruine and diſtruction. And becauſe their honeſt work is full of Reflection, and they have been oft-times ſubject to ſad Influences for their labour, their Perſons are put under the Protection of the Law, and priviledged in an eſpecial and a deſerved manner. 11 H. 6. 11. 5 R. 2. cap. 4. Parl. 2.

They ſhewed not greater skill and policy in the framing, obtaining, or aſſerting the Tenor and Eſtabliſhment of their Laws and Liberties, than they did of Magnanimity, Care and Vigilance, to ſee them inviolably executed and maintained. In this King's time, ſundry Inſtruments paſs'd, that Inquiries might be made into their due obſervance. And though by the Precedents alledged, we may find him zealous and moſt profoundly Solemn in the making of ſtrict Oaths and Promiſes, yet we ſhall find him neglect both Faith and Honour in the matter of Performance.

Henry the Third, in 7 *Regni* (and in nigh 20 other Parliaments) *Requiſitus ab Archiepiſcopo, &c. ut libertates & literas conſuetudines pro quibus querra mota fuit contra patrem ſuum confirmaret* 2 H. 3. m. 6. 3 H. 3. Parl. 2.

maret, & idem Rex diffugere non potuit (quin hoc fatetur ac) facere cum in receſſu Lodovici *ab* Anglia *juraverat, & tota Nobilitas* Angliæ *cum illo, Quod Libertates præſcriptas omnes obſervarent & ab omnibus traderent obſervandas, Quod audiens unus ex Conſiliariis Regis, dixit Libertates quas petitis quia violenter extortæ fuerant non debent de jure obſervari: ſed ei reſpondebatur, ſi regem diligeres pacem regni non impedires, & poſtea Rex dixit, omnes Libertates illas juravimus, & omnes aſtricti ſumus ut quod juravimus obſervemus.* The King nevertheleſs did not perform the ſame, (and no wonder, for here were evil Counſellors in the caſe) But ſending an Embaſſy to the *French* King, to ſurrender to him *Normandy*, in purſuance of an accord made in *England*, and urging againſt him breach of Faith, for that he had fail'd to perform the ſame ; received in anſwer, (by way of Recrimination, *Ille prius pactum violavit, non ego*) becauſe he had not confirm'd the Charter of his Peoples Liberties, which gave commencement to the War, and which by Oath he had ſtipulated to confirm ; and adds, *Quod peſſime leges ad ſtatum priſtinum ſunt reductæ, & illis nequiores generaliter per* Angliam *ſunt conſtitutæ.*

Matth. Weſtm. 133.

The ſame King, in the 15th of his Reign, brought in debt by his Foreign Wars, *neceſſitate compulſus, ab omnibus generaliter auxilium poſtulavit, Reſpondebatur, Quod omnes qui de eo tenebant in Capite, cum ipſo ibi erant corporaliter præſentes et pecuniam ſuam ita inaniter effuderant, ut quod inde omnes pauperes receſſerant, unde Regi auxilium non debebant, & ſic petita Licentia Laici omnes receſſerant.*

Again,

Again, In the 21th of his Reign, demanding a ſupply or aid to ſerve his wants, to be put into the hands of ſuch perſons, as they ſhould appoint to be disburſt only, upon the neceſſary and urgent Affairs of the Kingdom, the Parliament expecting no ſuch Overture, *Indignantes reſponderunt ſe undique & ſæpe gravari promittendo & perſolvendo, aſſerentes indignum nimis fore & injurioſum permittere regem, &c. ut à naturalibus hominibus ſuis, quaſi à ſervis ultime conditionis in detrimentum eorum & alienorum juvamentum, tantam pecuniam tot toties extorqueret argumentis, & inconſulte hoſtibus Regni diſtribuit, quod ſepius gravati videbant alieniginas ſuis bonis ſaginatas ſtatumq; regni præ paupertate vacillare, & multiplex periculum imminere, nec tamen* Theſaurus *Regius qui deberet eſſe regni robur & confidentia ſenſerat incrementum.*

Cupiens Rex hoc murmur ſedare, promiſit jurejurando, ſe nunquam amplius injurando moleſtare, vel laceſſando, dummodo ſibi præſens 30. pars mobillium Angliæ benignæ conceſſa ſolveretnr, & amplius cupiens ſe eorum ſibi gratiam conſiliare ſe extunc & deinceps (quicquid factam fuerat ante) dedit ſe conſiliis fidelium, & naturalium hominum ſuorum, præterea de hoc quod dicebatur, quod conabatur ea quæ conceſſerat, & chartis confirmaverat, per authenticum ſummi pontificis infirmare, dicebat Rex hoc falſum eſſet & ſi quid tale, quod forte fuerat ſuggeſtum in irritum affirmavit, ſequi penitus talia revocare, præterea ſereno vultu, & ſpontanea voluntate promiſit libertates magnæ chartæ ſuis fidelibus regni ſui extunc inviolabiliter obſervare, unde factum eſt ut omnium corda hæc audientium ſibi mirabiliter in verbo illo conſiliavit: whereupon

upon, *Post multas deceptationes quia se rex humilians promisit indubitanter se eorum extunc, & deinceps standum conciliis.* They with all Zeal, Readiness, and Obedience, answered the Kings Occasions.

Mat. Paris 24. H. 3. 1240. In three years after, we find them again, *Reponentes quæremoniam super variis injuriis & oppressionibus illatis ecclesiæ, per iniquum, Regis Consilium, contra suas chartas & juramenta, se vehementer admirari cum ipse Rex toties juraverat, jura ecclesiæ illibata conservare, ipse Candelam tenente dum episcopi contra violatores sententiam fulminabant, in cujus sententiæ consummatione, Rex ut alii suam candelam extinxit inclinando*: The like Sentence being denounced, *in omnes Regis consiliarios qui Regis animum ad predicta enormia conabantur inclinare.*

Mat. Paris 561. 26. Hen. 3. It was not longer than two years, when he made a farther Demand of money, for a foreign Expedition, which he had, without Assent of Parliament, engaged in. *Respondebant magnates cum magna animi amaritudine quod talia inceperat inconsultius & talia effrons impudenter postularet, exagitans & depauperans fideles suos, tam frequenter trahens exactiones in consequentiam, quasi à servis ultime conditionis & tantam pecuniam toties extorsit inutiliter dispargendum, contradixerunt igitur Regi in faciem nolentes amplius sic pecunia sua spoliari.*

Obs. War inconsiderately and rashly undertaken, seems to be the Fever and Distemper of a State, but when in Truth it is the *ultimum remedium*, and last reserve for Law, against Oppression, and for liberty against Invasions, it becomes necessary and unavoidable, we must be care-

careful not to interest our selves in the first, that we may not be unprovided to support the last occasions; to that end we have a restraint of Law, and very good rules to guide us, for we must not forget, that a politick Kingdom is an Association of men (in all Cases) by consent of Law, making one chief, who is made for the defence of the Law, and of his Subject's Bodies and Estates, and he cannot govern by any other Power, and of this Nature is this Kingdom; And though it be agreed, that War is necessary, yet our Laws compel not any to foreign Service, (if not obliged by special Tenure) unless the Parliament had given their Consent and Approbation of the same, neither were Taxes and Supplies allowed or consented to, unless the Burthen of the War appeared to be extraordinary, and then they have been liberal to Excess, witness the royal Aid given to Queen *Elizabeth*, the moyety whereof, she only accepted of, and gave her Thanks for the Remainder, which she remitted.

Forteſc. 12. 13. *fo.* 30. 31.

1 Ed. 3. St. 2. *c.* 5.

14 *Ed.* 3. *St.* 2. *c.* 11. Bodin *rip. lib.* 6.

However, the King not to be diverted by any Denial, persisted immoveably to pursue his Resolutions, and laboured by all the Arts of Policy and Perswasion, to incline them to this Aid, adding an Expostulation, *Quæ fronte poteritis me dominum vestrum ad tam arduum negotium reipublicæ procinctum relinquere pauperem & desolatum cum tenear promissa de transitu meo adimplere jurejurando strictius allegatus, quod cum ad universitatis notitiam perveniſſet, responderunt supra id quod dici potest admiramur in quam abyssum submersæ sunt innumerabiles pecuniæ quas à diversis magnatum custodiis & variis extortionibus* &c. *do-*

mine Rex immunxiſti quenunquam Regno vel modicum contulerunt incrementum, præterea legatos quoſdam vel legatorum fungentes officiis in hoc regnum advocaſti qui quaſi racemos poſt vindemias, ſibi reliquias reſidue pecuniæ colligerunt, cæterum nimis admirantur magnates Angliæ univerſi quod ſine eorum conſilio & aſſenſu, tam arduum, tam periculoſum es aggreſſus, fidem adhibens, fidem carentibus, ſpretoque naturalium tuorum favore, exponis te tam ancipitis fortune caſibus. Treugarum fœdus inter Regem Francorum, *& tu in anima tua captatum ac Juratum indiſſolabiliter & inviolabiliter uſque ad terminum obſervandarum inhoneſte & impudenter, non ſine periculo animæ tuæ & fameleſione diſrumpis & ſic ſolutum eſt concilium:* Withal, they cauſed the reaſons of their Denial of Supply, to be recorded.

1. For that the King ought to keep the League made with the King of *France*, ſacred and inviolable, and then if the King of *France* ſhould fail on the performance of his part, *Libenter ad hoc Conſilium apponerent pro poſſe ſuo de auxiliis ei dando.*

2. That they had granted after many other, a late Tax, with this Condition, *Quod iſta vexatio vel alia Precedentes amplius non traherentur in Conſequentiam, & inde fecit eis chartam ſuam.*

3. The ſaid late Tax was appropriated, and withal committed to the Diſpoſition of, *&c.* from whom they have not as yet been adviſed, that the money was as yet expended, ſo believe it to be yet ready for the Kings preſent Wants and Supplies.

4. That the King by ſeveral other ways both caſual and certain, had or might have received, and

and been poſſeſs'd of conſiderable Sums of money, by which they at leaſt are impoveriſhed.

5. Becauſe the King after the laſt late Tax, given, *nunquam chartam ſuam de libertatibus tenuit imo plus ſolito poſtea gravavit reſponderunt eidem domino Regi preciſe quod nullum ei ad præſens facerent auxilium.*

We may here inſert, that the Parliament did uſe a Power to inſpect and regulate the Profits and Revenues of the Crown, and did as an important act of Duty, inquire into the Manage and Diſtribution of the Royal Treaſure, for the King's Revenue is of a mixt Nature, and much of it is intended for publick Service, as himſelf is a publick perſon. 11 R. 2. n. 8. 13.

The common end of all, is to ſupport the royal State in time of Peace, and for the Maintenance of Strength and Force in time of War, ſo that it not improperly concerns the Parliament, to take account, that it be not irregularly and profuſely waſted, if it be extravagantly ſqandred, it muſt by extraordinary Courſes be ſupplyed, which is ever out of the Peoples Purſes.

And it has been by Law judg'd neceſſary and expedient, to expoſtulate with the Officers of the ways and occaſions of it's Diſburſements; for it concerns them, to provide in all the Exigencies and Emergencies of the Crown: and when neither Aids nor Loans, Taxes nor Aſſeſſments, could ſatisfie the Expences, and the Crown Demeans have been invaded by pawning, ſelling, or otherwiſe imbeſelling, treaſuring up Poverty for the future both of 15 Ed. 3. cap. 3. Speed 435. 3. in Hen. 2.

1 R. 2. n. 48. King and Crown; they have been forced to ſtop the Leak, and have reindowed the Crown by Statutes of Reſumption.

Undoubtedly, 'tis ſeldome but that Kings conſider the condition of their People, that their Patience will be ſpent ſoon after their Supplies, if they ſee all waſted without proſpect of Advantage, ſo that they will keep a Rule upon their private Expences, and ſet a good gloſs upon the publick, and lay a Plat-form for augmenting the Treaſure of the Kingdom, as well for the benefit of the People, as the Crown. And if the People part with Money, and thereby the Kingdom encreaſes in Honour and Renown, it's becoming a Terror to it's Neighbours, makes a fuller Security to their Enjoyment, and ſo they are no looſers at drawing up the Ballance; for when their Money is applyed to it's proper end, expended on evident grounds of State, levyed with a tender hand in a way of Parliament, it cannot on thoſe terms be taken, becauſe it is ever ready to be freely and neceſſarily beſtowed and given.

Mat. Paris 360. *Henry* the third yet ſuffering himſelf to be abuſed by wicked Counſel, provoked the People ſo much by ſuch continued and repeated Violences upon them, that they aſſociate themſelves in Counſels and in Arms, the City of *London* appearing with greateſt Zeal to encourage the deſign. Before the War commenc'd, the King obtain'd, *Licet cum multa difficultate*, time for Truce, with Promiſe to give them Satisfaction at the next Aſſembly of the Parliament, which being indicted to be held at *Oxford*, *Præclari viri ad Parliamentum* Oxoniæ *venientes*

Mat. Paris 940. and in diverſe other places.

nientes ſibi præcaventes & providentes confederati ſunt, quia pedicos & laqueos alienorum formidabant vehementer, & regis Retiacula nimis ſuſpecta habuerant, veniebant cum equitibus & armatis, & comitatu copioſa Communiti Parliamento, *autem incipiente ſollidabatur magnatum Conſilium immutabile exigendo conſtantiſſime, ut dominus Rex chartam libertatis*, &c. *firmiter teneat & conſervat, quamque idem Rex multoties conceſſerat & tenere juraverat ejuſq; infractores horribiliter excommunicaverat & ipſe fuerat unus excommunicantium exigebant inſuper ſibi juſticiarium fieri qui juſtitiam faceret equinanimiter divitibus & pauperibus. Quædam etiam alia regnum contingentia, petebant ad Communem regiſet regni utilitatem pacem ſimul & honeſtatem quorum conſiliis & proviſionibus neceſſariis Dominum regem frequenter & conſtantiſſime conſulendo rogitabant obtemperare, jurantes fide mediante, & mutuo dextras exhibentes quod non omitterent propoſitum perſequi pro pecunia vel terrarum amiſſione, vel etiam pro vita & morte ſua, & ſuorum. quod Rex recognoſcens juravit Conſiliis eorum obſecundare &* Edvardus *filius ejus eodem eſt juramento aſtrictus.*

After which they expell'd all the Aliens away from being near the King, and in the 43 of *Hen.* 3. there iſſued out Commiſſions or Precepts to the ſame Effect; moreover, that every man injured might freely ſue or complain againſt or arreſt the King, or any other perſon. *Rot. Parl.* 43 Hen. 3. *m.* 10. *n.* 41. 50.

Either houſe of Parliament may take a voluntary Oath, to ſee their Laws obſerved. *Note.*

In the forty ſeventh of this King, there aroſe a difference between the King and People, about the Performance of the Acts of the laſt Parliament *Co.* 2. *Inſt.* 536.

ment at *Oxford*, which was submitted to the Compromiſe of the *French* King, who vacated all the Acts and Tranſactions of that Aſſembly, *excepto hoc quod antique charte Regis* Johannis Angliæ *univerſitati conceſſe per illam ſententiam in nullo intendebat penitus derogare*, By the which Reſervation, they conſtrain'd the King to ratifie all the Acts of that former Parliament.

Walſ. *hiſt.* Ang. 37. 38.

King *Edward* the Firſt, in the twenty fifth of his Reign, aſſeſſed an unreaſonable Tax on Wool, without Conſent of Parliament, and alſo iſſued forth a large and general Summons, to command the people to accompany him in his 'Wars in *Flanders*. Two Earls, Ex parte co-'mitum ſui regni, & tota Communitas remonſtrate, againſt the Impoſition, foreign Service, and other Grievances, againſt the great Charter and their Liberties. 'Quia non tractarentur ſe-'cundum leges & conſuetudines terræ, & ſe-'cundum articulos contentos in Magna Charta 'ſecundum quos tractari anteceſſores ſui ſole-'bant habere ſed voluntare excludantur, quia 'vero communitas optat ſalutem domino noſtro 'regi, non videtur eis quod ſit ad bonum Regis 'quod tranſeat in *Flandriam* niſi plus eſſet aſſe-'curatus de *Flandrenſibus*, pro ſe & pro gente 'ſua, & ſimul cum hoc, propter terram *Scotiæ* 'quæ rebellare incepit, ipſe exiſtente in terra, '& eſtimant quanto pejus facerent, cum certifi-'cati fuerim quod rex mare tranſierit, nec ſolum 'pro terra *Scotiæ*, ſed etiam pro terris aliis, que 'non ſunt debito more ſtabilitis. Withal, inhibiting the Kings Miniſters, for levying the aforeſaid Tax, 'Dicentes à Conſcientia ſua non 'emanaſſe, ſine quorum aſſenſu tallagium non debet

'debet imponi vel exigi. After which, upon their meeting again by new Summons, it was accorded, the Charters ſhould be confirmed. 'Et quod nullum auxilium ſeu vexationem exi-'gat à clero vel populo, abſque conſilio & aſ-'ſenſu, & quod omnem offenſam dimittat. And in the laſt Clauſe, 'Quod omnes clerici & laici 'de Regno noſtro habeant omnes leges libertates '& omnes Conſuetudines, ita libere & integre 'ſicut aliquo tempore conſueverunt melius ple-'niuſque habere. The King ſollicited the Parliament, that though they gave him no Aſſiſtance, nor would accompany him in his Deſign for *Flanders*, yet at the leaſt, that they would reſpit their Complaints until his Return, for his intended Expedition.

The Charter of the Forreſt wanted it's Confirmation, and the Nation complaining of their Grievances, by undue and irregular Perambulations, the King iſſued out his Writ, that though the Commiſſions were executed and returned, they ſhould not be obliging until allowed by Judgment in Parliament, upon fair hearing, by Allegation and Defence, and that in thoſe Countries where any Forreſts were, the Sheriffs were by Writ to ſummon all perſons concern'd, to appear and make their Exceptions againſt the Perambulations in Parliament (a Courſe moſt neceſſary after the making a good Law, to prevent the Abuſes in it's Execution; and it may be, it would not be without good Benefit and Convenience to the People, if the ſame Method was made more practical, eſpecially in the Impoſts of *Ex.* and *Hea.*) But this Confirmation was abridged with an unuſual Clauſe and Addi-

28 Ed. 1. *d.* 7.

Co. 2. *Inſt.* 527 *to* 538.

tion

tion, *viz. Salvo jure Coronæ noſtræ*, at which, the Parliament took ſo great Diſguſt, and were ſo highly diſſatisfied, they diſſolved themſelves in Diſcontent; and at their next Summons, appear'd at *Stamford*, 'Equis & armis commu-'niti, ut hactenus delatam extorquerent ad ple-'nam ubi Rex eorum voluntati in omnibus con-deſcendit, as appears by the Stat. yet in Being, of *Articuli ſuper chartas & de tallagio non concedendo.*

In a full Convention of the men of *Kent* only, after *William* the firſt had by Force or Compoſition, not only reduced *London*, but the moſt conſiderable part of the Kingdom, to his Obedience, the Arch-biſhop of *Canterbury* thus beſpoke them, That they were born free-men, that the name of Bondage, was never heard of, amongſt them, that nothing but Servitude attended them, if they ſubmitted to the Inſolence of an invading Enemy, as others had done, exhorted them, rather manfully to fight for the Laws and Liberties of their Country, and rather chuſe to end an unhappy life by fighting valiantly for them in the Field, than to undergo an unaccuſtomed Yoak of Bondage, or be reduced from their known Liberties, to an unknown and unſure Slavery. This reſolute Biſhop became their General, and their honorable purpoſe was attended with a brave Succeſs, they obtain'd the happy Compoſition to enjoy their ancient Liberties for ever, without any Diminution, and uſe the ancient Laws and Cuſtoms of their Country, a preſident full in point, to prove the Peoples Laws and Liberties, were ancient and of Right, that they rather choſe to hazard

hazard Life than part with Liberty, the true Character and Badge of a free *Engliſhman*.

'Proceres & nobiliores regni videntes ſe contemni & Petrum de *Gaveſtum* cunctis anteferri, acceſſerunt ad Regem humiliter rogantes, ut Baronum ſuorum vellet tractari regni negotia conſiliis, quibus à periculis imminentibus non ſolum cautior ſed tutior eſſe poſſit, quorum votis Rex facie tenus annuit, & in exilium relegavit. But the Parliament ended, the King recall'd him by Writ immediately, and therein recites his Exile to be againſt the Laws and Uſages of the Realm, which he was bound by Oath at his Coronation, to obſerve and maintain, for which cauſe, he did out of that common Right and Juſtice, which was due to all his Subjects, recal and reſtore him without his Peers, and againſt their Wills. *Barones igitur conſiderantes, Domino regi denunciarent, aſſenſu communi ut vel dictum Petrum à ſua compelleret Committativa, articuloſque proviſos effectui mancipare, vel ipſi in eum tanquam in perjurum inſurgerent, addita conditione, quod ſi de cætero poſſit inveniri in* Anglia, *vel in aliqua terra regi ſubjecta caparetur & velut hoſtis publicus declaretur.* Judgment was given againſt him three times, 1. as a Commoner, 2. as an Earl, 3. as an Enemy and publick Traytor to the Realm, and Sentence of Death, pronounced upon his Return from Exile, which in due time was executed accordingly.

Ypodig. Neuſt. pag. 99. 100. Cla. 5. Ed. 2. m. 155.

Exilium Hug. de Spenſer. Mag. Char. part 2. fo. 50.

The Oath of the Lord Chancellor, Treaſurer, Privy Seal, Juſtices of the one Bench and other, the Chancellor and Barons of the Exchequer, as Juſtices aſſigned, and all they that do meddle

14 Ed. 3. cap. 5.

dle in the ſaid places under them, is that they
15 Ed. 3. ſhall well and lawfully ſerve the King and his
c. 3. People, in their Offices, which Law was farther
18 Ed. 3. improved by diverſe Statutes, enjoyning them
St. 3. by Oath, to do even Law and Execution of
20 Ed. 3. Right to all Subjects, rich, and poor, &c. And
1, 2, 3. if any of them do or come againſt any point of
1. R. 2. the great Charter, or other Statutes of the Land,
cap 2. he ſhall anſwer to the Parliament, as well at the
45 Ed. 3. Kings Suit, as at the Suit of the Party, by which
the Parliament out of due care of the publick
Good, have in all times queſtioned, arreign'd,
diſplaced, puniſhed, &c. The King's greateſt
39 H. 6. c. 1. Counſellors, Offices, Judges, for Miſdemeanor,
as in infinite variety of ancient Preſidents, and
in ſome of latter Inſtance, *viz.* of Cardinal *Wool-
ſey*, in *Henry* 8. Duke of *Sommerſet*, and Lord
Admiral, his Brother in *Edward* 6. Sir *Francis
Bacon*, Lord Keeper, and *Cranfield* Lord Trea-
ſurer, in King *James*; and have yet farther as
of Right, claime and Intereſt in the Nomina-
tion, or at leaſt of Approbation of Perſons to
Daniel 164. thoſe Offices, *Anno* 1248. *temp. H.* 3. They ex-
hibited their Complaint, that the chief Juſticier,
Chancellor, and Treaſurer, were not made by
the Common Counſel of the Kingdom, accord-
ing as they were in the time of his magnificent
Predeceſſors, and as it was fit and expedient,
Daniel 171, 172. and after in 1249 and 1254. They require and
claim again their former Rights, for their Ele-
ction, which in a Parliament at *Oxford* and
others ſucceeding, were accorded to them, as
may be ſeen in all the Writers of the Stories of
thoſe times. But to conclude this matter, their
Demands were aſſented to and confirmed by
Parli-

Parliament to them, fully and at large, in the 15 of *Ed.* 3. which never had other Repeal, but by ſingle Proclamation, ſo muſt at this day be acknowledged to be in Force. The Commons came before the King, (*Henry* 4.) and Lords, and by their Speaker (on the laſt day of the Parliament) prayed the King to have Cogniſance of the Lords of his Councel, and that thoſe Lords who were before named, and only ſworn on certain Conditions, ſhould now be newly charg'd and take their Oath, without Exceptions. To which, the King aſſented, the Councel was named in full Parliament, and their perſons particularly known to the end the Commons might if they ſaw Cauſe except againſt them, before they were by Oath admitted into the Privy Counſel.

15 *Ed.* 3. 3. 4.
3 *R.* 2. *Rot. Parl. n.* 11.
1 *H.* 4. *n.* 106.
1 *H.* 4. *Rot. Parl. n.* 14.
1 Hen. 6.

The Parliament appointed eight Aldermen and other Citizens of *London*, Treaſurers to receive and iſſue out theſe Moneys that were levyed by that Parliament to ſupport an intended War with *Spain*; and moreover, conſtituted and commiſſioned 10 Lords and Knights, particularly nominated in that act to be of the Kings Counſel for the War, five whereof at leaſt were to make a Quorum.

21 *Jac.* 33.

I ſhall only add ſome few Inſtances, where in the Houſes joyntly or ſeverally have interpoſed with their Adviſe and Reſolutions, againſt the papal Uſurpations.

Pope *Innocent* by Bull (after King *John* had ſurrendred his Crown and Kingdom to him) in a General Counſel, repeal'd the *Magna Charta* (although it had been ſworn to by King *John* and confirmed by the Pope before) alledging,

Mat. Paris 254.

it

it was obtain'd by Force, commanding the King, not to obſerve the ſame, inhibiting the Lords and People, not to exact it's Obſervation, which he utterly cancell'd and made void, 'Et ut nullo unquam tempore aliquam habeant 'firmitatem, cum Magnates has literas tam 'Commonitorias quam Comminatorias acceptiſ-'ſent, noluerunt deſiſtere ab inceptis, ſed ad 'hæc inſurgentes regem acriter infeſtabant, di-'cendo de Papa, ve qui juſtificatis impium, &c. 'And moreover, Excommunicationis & inter-'dicti papæ ſententias, Civitas *Londinenſis* adeo 'diſpexit per Contumaciam, quod nec eas Ba-'rones obſervare, nec prelati publicare decreve-'runt, dicebant quod non pertinet ad papam, 'ordinatio rerum laicarum, farther, reviling his Holineſs for intermeddling, and charging the Cauſe of his prepoſterous Zeal, *ut in Barathrum Romane avaritie omnia demergantur.*

23 *H.* 3. And when King *Hen.* 3. and his Clergy, had conſented to an intolerable impoſition, at the Inſinuation and Importunity of the papal Brokers, *Comites* &c. *& laici omnes contradixerunt*, from this fundamental Axiom, *Nolunt leges* Angliæ *mutari, quæ hucuſque uſitate ſunt & approbate.*

Lib. St. Albans, *fo.* 20. *in.* 44. *H.* 3. *Adomar* Biſhop of *Wincheſter* being baniſh'd by the three Eſtates, the Pope expoſtulating the Sentence, *quatenus* a Biſhop or Churchman, had this Reſolution from the Commons, *Si Dominus Rex & regni majores hoc vellent, Communitas tamen ipſius ingreſſum in Angliam, jam nullatenus ſuſtinerent, Petrus de Montford*, their Speaker, ſubſcribed it, *vice totius communitatis*, as Sir *Ino Tiptoft* ſubſcrib'd the Intail of the Crown, 8 *H.* 4. *Vice totius communitatis.* The

The Commons would not accept the 2 *H.* 4. 15. nor the 8th of *H.* 6. for Laws, though made by King and Lords, becauſe their aſſent was wanting at their making. 1. It may appear, the Commons did claim a Power in themſelves to oppoſe the King and Lords, to make a diſpenſation of an Act of Parliament, without their Concurrence; And 2. It proves that Power more ancient than 49 *H.* 3.

Henry the Second, by a large invitation from the Pope (on purpoſe, ſayes the Book, to make an advantage upon his Kingdom in his abſence) was courted to undertake the Holy War, and choſen King of *Jeruſalem*, who likewiſe ſent him the Keys of *David*'s Tower, of the Sepulchre, and withal, a conſecrated Banner. The matter he communicated to his Parliament, whom he adjured. *Quatenus proponerent in medio, quod ſuper his ſaluti animæ ſuæ viderint expedire, ad hoc unum cor ſuum inclinatum dicebat, ut quod exciperet ex eorum omnibus Conſilio modis obſervaret.* It was reſolved upon the Queſtion he ſhould keep within his own Dominions, according to his Oath and Duty, for the Government of his People, *Eſſe enim Regis animæ multo ſalubrius quod regnum ſuum debita cum moderatione gubernat. Et de filiis Regis quidem quorum petiit aliquem patriarcha, ſi rem tamen ſtatuerit quicquid ſtatuerit, cum eſſent abſentes incongruum videbatur.* *Ingulp. Hiſt. Col.* 626.

Obſ. 'Tis unreaſonable, both for the thing it ſelf alſo, becauſe of the King's own Perſonal Ingagement, to enter into the manage of a Foreign offenſive War, without the general conſent and contentment of the People, for the Per-

Perſon of the King is not to be expoſed in every occaſion that may provoke a War, without due adviſe and deliberation had with his great and publick Council, for that the welfare of the Kingdom is hazarded in his Perſon, and their Liberty highly concerned in his Safety: So that *Ed.* the Third was prevented of a Voyage into *France*, though their Deſign was only to reſtore a Peer by the advice and direction of his Parliament.

1 *Ed.* 3. St. 1.

I cannot omit to inſert this memorable cloſe of an Epiſtle ſent by the Parliament unto the Pope. " Nos tamen qui in regni negotiis por-
" tamus pondus dierum eſtum & quibus una
" cum ipſo Domino Rege intendere conſerva-
" tioni regni diligenter incumbit oppreſſiones
" Deo & hominibus deteſtabiles, & gravamina
" nobis intolerabilias non poſſumus equanimiter
" tolerare, nec per Dei gratiam amplius tolera-
" bimus. Quia contra antiquas Conſuetudines,
" Libertates, & Regni Jura, & niſi de gravami-
" nibus Domino Regi & Regno illatis, Rex &
" Regnum citius liberentur opportebit nos po-
" nere murum pro domo Domini, & Libertate
" Regni, & niſi citius per vos corrigentur pro
" certo teneat Sanctitas veſtra. Quod non im-
" merito teneri poteſt, quod tam Eccleſiæ Ro-
" manæ quam Domino Regi, tale periculum
" minuebit quod eidem rem non poſſit (quod
" abſit) adhiberi.

To avoid being further tedious, I ſhall conclude with the following Preſident, 'Tis an anſwer given by *Edw.* 1. unto the Pope, who had lately made a damand of the Arrears of that annual Rent formerly reſerved upon the

Sur-

Surrrender and Reconveyance of the Crown and Kingdom, by and unto King *John*, *Se ſine prælatis & proceribus Regni non poſſe reſpondere, & quod jurejurando in Coronatione fuit aſtrictus, quod jura regni ſui ſervaret illi bata, nec aliquid quod tangit diadema ejuſdem regni abſque ipſorum requiſitos conſilio facere.* Afterwards, the Parliament adviſing of the Propoſition, affixed to their Diploma, *Nec permittimus, nec aliqualiter permittemus, ſicut non poſſumus, inſolita, indebita prejudicialia & alia inaudita prælibatum dominum Regem etiam ſi vellet facere ſeu modo quolibet attemptare.* *Rot. Claus. 3. Ed. 1. m. 3. in Scedula.* *Vid. Coo. 4. Inſt. 13. and 40 Ed. 3.*

It is moſt apparent by Law and Preſident, that the two Houſes are not ſo altogether inſignificant or uſeleſs, but that they had this Power eſtabliſhed by Law, and ought to be conſulted for their Power of Adviſe and Conſent, in the higheſt Concernments of the Kingdom, and they were not merely paſſive, but were enabled to exert their power, and to demand and juſtifie their Rights againſt the Innovations of King or Pope, againſt the ill and deſtructive Practiſes of wicked and unnatural Counſellors to King and State, that they have ever acted with an unprejudiced deſign for publick Good. And 'tis from undeniible proof made evident, the King cannot diſpoſe of the Crown, or the Regalities thereof, without having the Concurrence of this great Counſel; that they interpreted and intruſted the power in the King for publick Good and Safety. The Kings themſelves have all confeſſed and allowed their Power, and it may be obſerved they were never in perfect Peace or ſecurely happy, when they incroach'd too much

upon, or invaded the Peoples Liberty too far; and that though at ſometimes againſt an over-awing and forcible Injury, they did furniſh themſelves with ſuitable Defence in order to a Remedy, they never perſiſted beyond the demand or deſiſted ever, when they had obtain'd the Aſſurance of their Liberty, and Caution for their Freedom, and had not they interpoſed between the Kings Weakneſs, the Clergies Treachery and Ambition, and the Pope's Power, this Monarchy and Kingdom had not only been tributory and inſlaved, but long ſince, converted into the Poſſeſſions and Demeans of St. *Peter*'s Patrimony. And it was apparent, that the King's acting to the Abridgment of the Peoples Rights and Liberties, contrary to Oaths and Promiſes, ſcandalized and weakned the Obligation of thoſe Oaths that were reciprocal betwixt them; and by ſo doing, frequently incur'd the Sentence of the Church, and when the ordinary Methods of their Counſel would not avail, and the Practices of the State have run high in their prejudice, they have petition'd, remonſtrated, aſſociated, and reſolutely oppoſed all unjuſt and arbitrary Aids and Taxes, and have ſometimes with more than ordinary Obſtinacy, withſtood all Inſinuations that might have miſled them into ſuch Complyances. And by their continual Claim did aſſert *inter alia*, undeniable Right for the furniſhing all publick Money, which they gave ſparingly, yet ſeaſonably, ſufficiently, honourably, for the Emergencies of the Crown: for 'tis not as the Lord *Burleigh* told Queen *Elizabeth*, looſe Shifts, ſubtile Projects, nor accidental Profits, that can ſupport the Grandure and ſe-

LL. Inæ. Camb. *will.* 1. 27 Eliz. *confirming the aſſociation.*

Vid. rem. 4. Car. 1. *Full. Ephepart.*

ſecure the State of any Prince, but ſolid, ſerious and weighty Counſels and Supplies; They were moſt zealous in all neceſſary foreign Wars to ſupport the Royalty and Grandure of their Sovereign, and moſt diligent and jealous in the Maintenance and procuring the Obſervation of their Laws and Liberties at home, obtaining Oaths, Proclamations, and other Inſtruments to that end; nor were Wars regularly made without their Counſel, *Cook*'s *Inſt.* on *Mag. Char.* 538. *Speed.* *Grafton* 221, 222, 223. 13 *Ed.* 1.

We will conclude, that though that may ſeem to have been ſometimes too importunate and violent, yet we muſt allow of this on Truth, that they did not always complain without a Cauſe, ſince ſometimes the Kings themſelves were then Witneſſes of their own miſdoing, as is atteſted in the Speech of *Ed.* 1. made to his Parliament, *Erumpentibus lachrymis veniam de Commiſſis humiliter poſtulavit dicens ſe minus bene & tranquilliter, quam regem deceret ipſos rexiſſe.* *Mat. Par.* 909.

And by this paſſage of *Ed.* 3. where the King in his Proclamation ſaid, that he did diſſemble with his Parliament, only to gain his own ends, and therefore by Proclamation would have contraveen'd the Actings of that Parliament. 15 Ed. 3. 50. See before in Speech *Hen.* 1.

But to obviate and anſwer ſome clamours that may be made againſt this Diſcourſe of Right and Liberty, as if I intended to encourage and introduce a riotous Freedom and Liberty.

Obj. In order to the giving a Reply, I ſhall conſider theſe Rights,

Anſw. Firſt, as they are either general, and ſo concern the whole collective Body, or ſecondly, ſpecial, as they relate to every individual Subject;

and in both I ſhall limit it to a Liberty guided and warranted by Law; For, though Liberty be a precious thing, yet 'tis dangerous to them that are not a Law unto themſelves, eſpecially in opinion, for that arraigns the Rule, and leaves the way open to Licentiouſneſs, and thus ſprang up the Inſurrections under *Kade* and *Jack Straw*.

Freedom in the firſt ſenſe, I define to be an Intereſt and Power of the People, by common and ancient Right, to adviſe and aſſent to thoſe meaſures that ſhall be taken for the general good and ſafety; and to juſtifie this ſenſe, this whole Diſcourſe is an intire Comment.

2. Freedom ſpecially conſidered; I take it to be, The Quiet and Peaceable enjoyment of the Goods of Nature and Fortune, according to the eſtabliſhed Laws of this Kingdom, as they concern the ſeveral Capacities and Conditions of men in the Sacred and Civil State;

I ſay, a quiet and peaceable Enjoyment (to prevent Tyranny, Rapine and Oppreſſion) of the Goods of Nature and Fortune, as they reſpect Liberty and Property, according to the Laws of the Realm: the Laws agreed to by King and People, in prevention and oppoſition of all Arbitrary Innovation.

As they concern the ſeveral Capacities and Conditions of men: that is, as they are provided and fitted to Office or Degree to our Governours: to the Lords or Commons; In the Sacred or Civil State: both in the Concernments of Religion and Policy.

Obj. 2.

Obj. 2. 'Tis objected, this pretended Freedom is inconsistent with, and utterly destructive to the Monarchy.

Anſ. The truth of this Objection or Supposition, is not onely utterly unreasonable, but is indeed almost impossible, if we consider the state of our Monarchy, and the Circumstances of that great Council, as they relate to that Form of Rule.

A Kingdom is a Society of men joy'nd under the Government of a single Person, for common Good. The King and People make one Body; He, as the Head, and as Superiour, affords Sense and Motion, the People, as inferiour, confer Nourishment and Strength; they have the same Interest, and are inseparable in their Condition, be it good or evil, so that if the Means and the End be set in opposition one to the other, it must needs cause an Impotency and Defect in both, for the Perfection of all things consists in the End (God onely is his own End.)

The Kings of *England* have alwayes had a Monarchy Royal, not Seignoral, where, under the first, the Subjects are Freemen, and have propriety in their Goods and Freehold, and Inheritance in their Lands; but under the last, they be Slaves, and have propriety in nothing.

Here the Law is the Boundary that measures between the King's Prerogative and the Peoples Liberty; 'tis the Legal Union of Allegiance and Protection and being confirmed by a Personal Union and stipulation, ratified by Oath on both sides, the Incorporation cannot

be diſſolved without the deſtruction of them both. This yet will be more apparent, if you allow the People to value and reſpect their Intereſt, their Safety, or their Politie.

1. As to Intereſt. The Lords and Commons, the ſubject of this Diſcourſe, are undoubtedly the great Body of this Nation, Proprietors and owners of much the greateſt part both of the Riches, and of thoſe large Territories and Poſſeſſions that appertain unto this ſpacious Empire, which, under the diſtribution of Laws by Regal Power, are diſtinguiſhed and continued in their ſeveral Proprieties and Enjoyments; all which, by any ſuch ſuppoſed Alteration, become unſettled, and are the Property of the next Invader. This is unqueſtiouably evident, (even to my perſonal damage and experience) from the Uſurpations in the late Rebellion: For when once the Rule is forſaken, we run amain down the Hill, nor doth any man think that diſhoneſt in him, which hath been profitable to another. Covetouſneſs will adminiſter fuel unto Cruelty, and the proportion of mens Offences ſhould riſe to the value of their Wealth, ſo that conſequently whoſoever was rich, muſt be guilty, and ſo every man become the price of his own danger; neither would any thing be ſcrupled that could be imagined gainful, for that breach once made, every man hath a like Intereſt in every thing, ſo that we cannot reaſonably think they will ſo far act againſt themſelves, nor become Deſertors and Aſſaſſines of that Law and Intereſt, that has coſt both them and their Fore-fathers ſo much Sweat and Blood, which is onely preſerved in Safety,

Safety, in the preſent eſtabliſhed Form of Government.

2. If we allow them to reſpect their Safety, *Ubi Judicia deficiunt, incipit Bellum, & par in parem non habet dominium*; where there is no poſitive obligation to obedience, there is unwilling and negligent ſubmiſſion to Command. That which is every man's Duty, is no Body's Buſineſs, and where a man is not accountable, or reſtrain'd by Law, he will or may tyrannize according to his Power. The ſtrength and power of the whole Nation is both unſuitable and unſerviceable to its preſervation, being ſcatter'd, diſunited, and diſorderly, not being united under a Head, to reſiſt Invaſion from abroad, and to prevent Commotion and Diſturbances at home. King. anſ. to 19. Propoſit.

Quem vocet Deum populus, Ruentis
Imperi rebus ----- Horace, *Ode* 2.

The Anſwer made by the Repreſentatives of *Scotland to Edw.* 1. who claimed the Superiority of that Kingdom in the time of the Controverſie between *Bruce* and *Baliol*, *&c.* ought not to be omitted, That they were ignorant that any ſuch Superiority belonged to the Kings of *England*, neither could they make anſwer to ſuch things without a King, the Head, upon whom it lay to hear ſuch a Denunciation, and proteſted, that other Anſwer they ought not as then to give. *Tho. walſin* in vita Ed. 1. Speed 635 19.

3. In reſpect of Policy, it cannot be imagined ſo many men ſo intereſted for their own Welbeing and Safety, ſhould put themſelves voluntary into an abſolute ſtate of Anarchy and

Confusion; For in the abolishing of Monarchy, they at the same time assassinate their Laws, and run themselves into Horror and Distraction, even the Foundation of the great Councel, and Court of Parliament, is *ipso facto* demolished, and they have neither Method or Power to convene or associate for publick Safety; for a Parliament cannot be held, unless the King be personally, vertually, or representatively present; by *Protector*, *custos regni*, or Commissioner, their present Laws are all suspended, and quite unserviceable to any other State of Rule, and have no farther Signification or Power either to assert or defend their property; the King only being intrusted for the general Benefit, to distribute Justice by that equal and unerring Rule: neither is there any President in our own (or scarce in foreign Story) to countenance such an impolitick and weak Suggestion. Tis true, several of our Kings have been judged incapable of that Administration, when by their own Consents they have waved the Government. But still the Election or Assignation of another, was so instant and immediate, that there never was *interregnum*, and our Law says, cannot be, the people rather choosing to submit to such a Power, though vested only with a pretended Right (as was evident, besides others, in all the times of the intestine Controversies between *York* and *Lancaster*) than hazzard the ill Consequences of an unexperienced, imperfect, and unaccustomed form of Rule.

1 H. 4. *n.* 1, 2. 3. 1 H. 5. *n.* 16. 4 *Inst.* 46.

Speed 951.

The *Scots* did pretend a right, to depose of their King *Bono publico.*

If we make a small Digression, and look into foreign Story, we shall find the practice of most other Nations, will justifie the Assertion: and

and I dare yet farther with Confidence aſſert, that no Republick at this day, can claim any other Beginning or Original, but what it muſt undeniably aſcribe to either Neceſſity or Chance.

To one or both theſe Cauſes, we may aſcribe the Original of the united States, who declared King *Philip* by his too violent Government againſt their priviledges (whereunto he had ſworn) to be an Enemy unto their State and Peace, and therefore upon breach of Covenant, to have fall'n from his Intereſt amongſt them. *Spec.* 1113. 167.

The Reſignations of that moſt eminent and renowned Emperour *Charles* 5. made to his Son *Philip*, and Brother *Ferdinand*, neither occaſion'd *Interregnum*, or Diſturbance in the Empire, or any other the Eſtates in his Dominion, *Cum* Cæſar *rerum molem ſuſtinere diutius pro dignitate, quæ ſe imperiumque deceat, haud poſſet, mature transferet in* Philippum *filium ætate ac ſapientia tanto oneri parem. Itaque*, Cæſarem *quod ſibi, quod Regi, quod provinciis bene vertat omni ſe* Belgi Burgundiæque *imperio abdicare, juratam ſibi fidem populis remittere*, Philippo *filio* Angliæ *Regi, jus poſſeſſionemque* Belgi Burgiæque *ex animi ſententia tradere, & duobus menſibus interjectis, majori hominum celebritate, Regnis, provinciis, inſuliſque tam in novo terrarum orbe exuens ſe* Cæſar, *eorum ſemel omnium poſſeſſionem, & jura* Philippo *filio addixit, & non multo poſt Imperii Coronam Sceptrumque Ferdinando fratri, multis ante annis Regi Romanorum Creato tranſmiſit.* *Strad. de Bell. Belg. lib* 1. 57. *&* 59.

Childerick was deprived by the Eſtates of *France, Pour remedier a la confuſion du Rayaulme viſiblement nee de la neantiſe de leur Royes concluent* *De Serres his Fran.* 118.

de

de rejetter Childerick *& de eſtire Pepin, l'un indigne de regner a cauſe de ſes Vices & l'autere tres digne d'eſtre Roy pour ſes urayment Royals Vertues.*

Ibid. 175. The people of *France* conceiv'd ſo great Averſion and Diſguſt againſt King *Charles le gros,*

185. for alienating and diſmembring the Demeans and Poſſeſſion of the Crown, *&c.* that by *Commune deliberation ſe reſolurent de depoſer & en mettre une plus-utile en ſa charge, chaſcun en ſon pais ſelon les deſtroits, dechaſſe de ſon palais.*

1 *C.* 5. *Charles* 3. was by the Eſtates of *France*, conſtrain'd to quit his Crown, who transfer'd the Power and Scepter into another Family, againſt the accuſtomed Law of Diſcents of that Country.

Ibid. 593. The Charter made by *Charles* the Sixth of *France*, to our renowned King *Henry*, the fifth runs, *Qu'en eſtabliſſient une firme & libere repoſe aux deux Royaulmes de* France *& de* Angliter *en contemplation de marriage de* Catharine *de* France, *il eſt declare regent du Royalme, du vivant du Roy* Charles, *au quel le tiltre de Roy demure, & a ſa femme Iſabeau letitre de Royne leur viedarant: mes que tantoſt apres, le treſpas du & deſtors avant la Couronne & Royaulme de* France, *avec toutes leur droits & appurtenances, demeurerront, & ſerront perpetuelment à lui ſon tres chere & tres ayme fits & a ſes heires in Chiefe*; This had the King's Oath and States Conſents to make it more authentick.

Hiſtor. of the troub. of *Swede.* & *Poland.* The States of *Sweeden* in the years 1540. and 1544. altered their elective Monarchy, and eſtabliſhed the Crown, to deſcend by Inheritance; yet after aſſumed the Power to deprive King *Erick*, and elected *John* his Brother, Duke of *Finland* to the Throne. 'Tis

'Tis the general Practiſe and Cuſtom of all States in elective Kingdoms, to regard the next in the right Line, unleſs known to be incapable or unworthy of ſo great a Power, as is apparent in *Hungary*, *Bohemia*, and was in *Swedeland*, *Denmark*, and *Ruſſia*, before they became hereditary; and at this day in *Germany*, the Reſpect to royal Blood, has been in ſome States ſo liberal, that they in the Caſe of a Baſtard to a Prince, becauſe well born, he was ſuppoſed lawfully born, as in the caſe of *Teucer*, and according to *Servius Regiæ conſuetudinis fuit, ut legitimam uxorem non habentes, aliquam licet captivam, tamen pro legitima haberent, & liberi ex ipſa natu ſuccedent*; See after, for *Hen.* 7. Queen *Eliz.* and diverſe before the Conqueſt. *Euſtath* on *Homer.* A. 8. *Il.* *Holinch.* *lib.* 17. *ca.* 13. 398.

After that, *Sigiſmund* elective King of *Poland*, but of *Sweden* by the former mention'd Right, breaking his Vow, and Oath of Coronation, and more eſpecially, violating Faith in the great matter of Religion, they would not acknowledge him any longer, for their Lord and King, or be thenceforward obedient, or ſubmit unto his Government, but denounced him, and reaſſumed and diſſolved their Oaths of Fidelity and Obedience, wherein they had been hitherto bound by Law and hereditary Union. And afterwards, they made Duke *Charles* his Uncle King, and intailed the Crown upon his Family and Iſſue, deprived the ſaid *Sigiſmund* his Son, and Brother, of all preſent or future claim and pretence unto the Crown, with this ſpecial clauſe, They would prefer none unto the Throne, that ſhould not be of the ſame Religion with them, and that any one that ſhould act any thing Hiſt. trou. *Swede.* and *Poland.*

thing againſt the eſtabliſhed Religion, ſhould be deprived.

The Realm of *Portugal* in a ſhort Tract of time, makes pregnant proof, tho the People may change the Perſon, they cannot aboliſh or depact with the Conſtitution of their Government, eſtabliſhed in a Monarch.

The Kings in our own Country even after Deprivation, have not loſt their Name, nor wholly their Honour and Eſteem, as may appear in the Proceſs againſt *Mortimer*, who was impeached of Treaſon, for the Murther of *Ed.* 2. in *Berkley* Caſtle, after his Reſignation and Depoſition.

The Nation after the late Rebellion (that dreadful State-Convulſion) was in a continued Ferment and Commotion, in a reſtleſs Agitation and Endeavour, under all the Appearances and Umbrages of Power, to reduce it ſelf unto it's Original Inſtitution; and under God, I think we may impute his Majeſties happy (and otherwiſe miraculous Reſtauration) rather to the general Influence of the natural conceal'd Principle, and Genius of the Nation, than appropriate or aſcribe it to any outward or apparent Cauſe, (I ſpeak not this to derogate in the leaſt from the Glory of that (now happy) perſon that was the fortunate Medium, to unite thoſe ſcatter'd Atomes, and give them Conduct to their deſired end) for the Reſtitution of the Government in the perſon of his moſt ſacred Majeſty, whom God long preſerve.

I ſhall only ſtrengthen my Aſſertion, that a Parliament cannot oreturn the Monarchy, ſince by their own act they have declared in full Parliament

liament, upon a demand made of them, in behalf of the King, that they could not assent to any thing in Parliament, that tended to the Disinheritance of the King and Crown, which by Oath they were sworn for to preserve. *Rot. Parl.* 42. Ed. 3. *no.* 7. *Coo.* 4. *Inst.* 14.

May his sacred Majesty long live to enjoy his Crown, and sway his Scepter, may his Councels be safe and prosperous, his Performances attended with Victory and Success, may he possess the full prerogative of his Crown, and fix this royal Maxim of the King his Father in his Memory, to guide it; * that the Prince may not make use of this high and perpetual power, to the hurt of those, for whose Good he hath it, and make use of the name of publick Necessity, for the Gain of his private Favourites, and Followers for the Detriment of his people; for it was his own saying, † that he served him best, that served him with Honesty and Integrity, and declared it as his Axiom, that the peoples Liberty strengthens the Kings Prerogative, and the King's Prerogative is to defend the peoples Liberties——*Bene enim cognoscimus quod cum vestro Consilio fuerit ordinatum id ad beatitudinem nostri Imperii & ad nostram gloriam redundare.*

* King's ans. to the 19. Propo.

† Kings Speech at passing the Pet. of Right.

I shall not interpose or any way concern my self to intermeddle in that, the now call'd grand Question of my ‖ Lords the Bishops Power in criminal Cases, it not being material to my subsequent discourse of the Parliament's Power, as the most supream Court of Judicature; for if they have power they will only add unto the number of the Judges, or if none, it will not detract from the Weight or Validity of the Court or Sentence. I shall only with all Modesty

‖ Although I do not intermeddle in the Question of Bishops voting in Sanguinary Causes, yet by good Authority, I may determine, that the King, Lords, and Commons, may hold a Parliament without them, and make good and binding Laws. *Crompt. Jurisd.* Cort. 19.

sty, present my Reader with the following Admonition of a former dignitory of the Church, probably in that day used on the like occasion of Dispute, *Quidam Episcopi regum munificentias & elimosunas antiquorum abusive Baronias & Regalia vocant & in occasione turpissime servitutis seipsos Barones appellant: vereor ne de illis quereletur dominus & dicat ipsi regnaverunt, & non ex me, principes extiterunt & ego non cognovi; Scias te assumpsisse pastoris officium non Baronis, certe in Ægypto* Joseph *patrem & fratres suos instruxit ut dicerent Pharaoni viri* pastores *sumus, malluit eos profiteri pastoris officium, quam principis aut Baronis, &c. vacuum à secularibus opportet esse animum, divine servitutis obsequio consecratum, &c. illud cœlestem exasperat iram & plerisque discrimen æterne damnationis accumulat, quod quidam principes sacerdotum & seniores populi, licet non dictant judicia sanguinis, eadem tamen tractant disputando ac disceptando de illis, seque adeo immunes à culpa reputant, quod mortis aut truncationis membrorum, Judicium discernentes, à pronunciatione duntaxat, & executione penalis sententiæ se absentant, sed quid hac simulatione perniciosius est: nunquid discutere & diffinire licitum est, quod pronunciare non licet? certe* Saul *multiplici machinatione tractabat, & ut malitiam suam sub umbra innocentie palliaret dicebat non sit manus mea in eum, sed sit super eum manus philisteorum, sane quantum simulatio hæc excusabat apud homines tantum apud deum eandem damnabilius accusabat. Expressa similitudinis forma in Consistorio illo in quo Christus ad mortem damnatus est pharasei & scribe dicebant, nobis non licet interficere quenquam, cumque tamen clamarent dicentes, crucifige, sententiam in eo occisionis cruente malignitate*

Canon Episcopalis tractat. de Instit. Episcop. Biblia patr. Tom. 12. pars 2. pa. 942. 944.

Osea 8. 4.

Gen. 48. 38.

1 *Reg.* 18. 17.

Joh. 18. 9.

tate dictabant, quem occidebant gladio lingue publice proteſtabantur ſibi occidere non licere, eorumque iniquitas eo ipſo deteſtabilior erat, quia ut evaderent humanum judicium, eum ſimulatione occultabant. Animabus prælatus es, non corporibus, nihil prælato commune eſt cum Pilato Chriſti villicus eſt & vicarius Petri, nec reſpondere oportet Cæſari de commiſſa tibi juriſdictione ſed Chriſto, Quidam tamen per uſurpatas ſeculi adminiſtrationes ſe vinculo curiali obnoxiant & quaſi renunciaverint ſuæ privilegio dignitatis, calculum durioris eventus expectant.

2. We are now come to conſider the Parliament, as it is the higheſt and moſt general Court of Judicature of the Nation, and then it conſiſts of the King and Houſe of Lords, (tho the King therein, neither votes nor judges, but only executes the Sentence of that Court) for the King is uſually there in perſon, and ever by Repreſentation in his Abſence, as appears by the old Entries of Records and Rolls, call'd, *Placita coram domino Rege in Parliamento ſuo* unleſs in matters that paſs by Bill which more properly fall under the third and laſt Diſtinction. Exact abrid. of Recr 377. 397.

This Court is ſo generally allowed of, and it's Power approved, and ſo well underſtood by men of moderate Senſe, that I ſhall not need to be tedious in my Authorities, to prove, or in preſident, to illuſtrate the propoſition.

If we look back into the ancient *Saxon* Story, we ſhall find their Nobility eſtabliſhed and continued by a threefold manner, by Birth or Blood, by Valour, and by Wiſdom. And that they were in great Power, for the Adminiſtration of Affairs in time of Peace or War, either, 1. Collectively in their great Counſel, for giving ſudden

den order for any particular part or member of the Common-wealth, or 2. A part, and that was in their *Iturs per pagos vicosque*. There they did consult and determine of meaner Matters concerning Property, and consequently, were interested and associated with the publick Ministers in all the inferiour Courts of Judicature, and in the Business of defensive War, as the Commands were vested in themselves, and lastly, in the sudden and extraordinary Affairs of State, unworthy the Assembly of the people, in their Wittagenmote.

Mir. cap. 5. Sec. 1. But their too general power was soon after their Arrival here contracted, and Limits thereto affix'd, and they were only Authorised by the Kings Writs, or Commissions by which they were specially deputed.

King Ed. *c. 16.* Under this Establishment it not only took Cognisance of the great and weighty Causes, but stooped to meaner Game by removing Causes by the King's Writ, from the rural Judicatories to their sublimer Termination, where the King as the Oracle of the Court, obliged himself, *Judicium rectum in regno faciurum, & justitiam per concilium procerum regni sui tenturum.*

Glanv. *lib. 2. c. 6. 78.*

It is manifest, it was a settled Court of Judicature, for that Fines were therein levyed, and Writs of Right determined, the Entry of the Judgment in the great case between the King of *Navar* and *Castile* was, *Commites & Barones regalis curiæ adjudicaverunt.*

The Honour and Employment of that Court was high and great so long as the Nobility made it their Business to attend thereon; but there were several things of an indifferent Mixture between

tween Design and Chance, that by degrees impaired, or quite det'd the prospect of its Glory.

Kings were become jealous of their Great[ness] and thought their Influence too general and publick, as taking Thought for private Interest, judged private Counsels thereto, more subservient, the Peerage Negligent, or overtoyled in Business. grew more remiss, or else by Emulation and Ambition, divided the Authority and by Divisions, began to loose Esteem, and lessen, and their Grandure to decay, and by piecemeal, quitted much of it's juridical power to the three Courts of Law at *Westminster*, the *King's-Bench*, *Common-Pleas*, and the *Exchequer*; and of the remainder of it's Ruines, gave the beginning, or at least, a great increase of Power and Business unto the Privy Councel.

Thus perished that ancient and rightly honourable grand Councel of the Lords, having first laid aside the publick, next lost their Unity, and lastly, much of their popular Interest and Esteem.

The Sense of State contracted into a privy-Councel, is easily recontracted into a Cabbinet-Councel, and last into a Favourite or two; thus by it's decay, it advantaged the royal Power, and at the same time made the Commons of this Nation, happier than any other people, their Equals, in admitting them to the Tryals of their Peers, or Jurors; whereby, as before, they had a part in the Legislative, they now attained the juridical power also, and so (under God) became possess'd of an absolute Dominion over themselves and their Estates.

And lastly, This Recess or Decay occasion'd the more frequent Necessity of calling Parliaments, the representative body of the Kingdom, in which Convention or Assembly at this day, they all have liberty of meeting and free voting without Impeachment, and then are still the supreme Court of Judicature of the Kingdom.

1 *Hen.* 4. *Rot. Parl. n.* 79. In the first of *Henry* the Fourth, the Commons made this Protestation, *Come les jugements du parliment appert iegnent soulement au Roy & seignieures & nient aux Communes.*

And Horn *Mir. c.* 1. *pag.* 89. Our *Saxon* Kings, after the Land was divided placed *Commites* over the several Counties, and for fear the King should wrong or harm his People, though he have no Peers, it behoved to have Companions of Right, to hear and determine in Parliament, of the Wrongs of King, Queen, *&c.* who otherwise could not have common right; this was made a Law by King *Alfred.*

Hoveden pag. 433. King's anf. In the tenth of *William* the First, *Episcopi Comit. & Barones regni regia potestate ex diversis provinciis, ad universalem Synodum pro causis audiendis & tractandis convocati sunt.*

to the 19. Propos. The Lord's duty and Power is to the same Purpose asserted by the late King, the Lords are trusted with a judicatory Power, and are an excellent Skreen and Bank between the Prince and People, to assist each against any Incroachment of the other; and by just Judgments to preserve that Law which ought to be the rule of every one of the three.

Coo. 4. *Inst.* 24. The Commons, as grand Inquisitors and Counsel of the Kingdom, may Enquire of, Impeach

peach and Tranſmit, Delinquents of all ſorts in Parliament to the Lords houſe their only Judges.

At the Tryal of the Earl of *Strafford*, the Commons prayed the Lords to give Sentence againſt him in a judicial way, and when after they proceeded by Bill, they then declared, they did it not to avoid their Lordſhips Judgment in a judicial way, but for preventing Doubts and ſpeedier diſpatch.

The Houſe of Lords ſhall remedy all Offences contrary to the Law of *Magna Charta*, and where no remedy is left or Judgment by Law, the matter ſhall be determined in Parliament, and the King ſhall command Execution to be done according to the Judgment of the Peers. 15 Ed. 3. c. 1. 15 Ed. 3. 3.

Having eſtabliſhed our Court of Judicature in point of Right, upon the ſure Foundation of the Law; in the next place, we ſhall furniſh ſome variety of Preſidents, that may evidence in Fact, and practice the Exerciſe of that power.

At a Parliament held at *Caerleon* by King *Arthur*, to a Demand made by *Lucius Tiberius*, Procurator of the *Roman* Commonwealth, of a Tribute pretented to be reſerved by *Julius Cæſar*, when he conquered *Britain*; they returned in Anſwer, that it was acquired by Force and Violence, ſo could not juſtly be poſſeſs'd by any, they giving Commencement to their Claim by Force, and that it was from an unreaſonable Cauſe, that they became tributory, wherefore they did deny to pay, or to allow the ſame. *Galfr. Mon. Hiſt. reg. Brit. lib.* 10. *c.* 1. to 14. Speed. 272.

Antiq. Brit. pa. 94. 95. The Difference between the two Arch-biſhops of *Canterbury* and *York*, was remitted from *Rome* to this Judicature, by *Alexander* the XI. *Quia conſuetudinibus, & privilegiis ac privatis Epiſcopatus inſtitutis, certius quam jure ſcripto definire poſſe videbatur, decretum eſt à papa ut à Rege & Regni Proceribus adjudicaretur, & adjudicatum fuit.*

Mat. Paris 666. 667. The Lords did adjuſt and comprimiſe the difference *inter Henry* the Third and *Alexander* King of *Scots*. For the Land granted to him from King *John*, he was to receive *annuatim* 300 *l.* *Sine caſtri conſtructione hommagiumque regi Angliæ faceret & fœdus inter eos ſanctieretur & hoc ſe fideliter facturum Regi Angliæ, & conſervaturum juraret.*

Ro. Hoveden, *pars poſt* 596. 597. They gave final Judgment *inter Henry* the ſecond, and *Roderick* King of *Canaught* in *Ireland*, concerning his Kingſhip, Royalties, Dominions Services, Homages, and Tribute due to the ſaid King *Henry*.

33 Hen. 8. 25 Hen. 8. 12. Sometimes they gave judgment of Affairs in *Ireland*, and left their Sentence to be executed by the Judges there, as in the caſe of the *Coperceners* of the Earl-Marſhal, 33. *Ed.* 1. and may do at this day, for that Kingdom may be included in general Words, or in a ſpecial Act of Parliament in *England*. *William Longshamp* Biſhop of *Ely* was made Protector of the Kingdom by *Richard* the firſt before his Expedition to the Holy Land; during the Kings Abſence, he was depos'd, *Omnibus Epiſcopis Committibus & Baronibus regni, ne talis de cætero in regno* Angliæ *dominetur, per quem Eccleſia dei ad ignominiam, & populus ad inopiam erat reductus, ipſe & Ganeones ſui totum regnum exhauſerant, nec viro baltheus, nec fœmine monile remanſit* &c. *theſaurum quoque Re-*

Hoveden 702.

gis

gis exaninaverat prorſus, ut in omnibus Scriniis vel ſacellis nihil præter claves de toto illo biennio poſſit inveniri.

Earl *Richard* the Kings Brother, being the Realm was much aggreived by calling in the *Poictevines*, as *Peter de Rivallis* &c. *Cum magnatibus affirmabat tamdiu ſe à Regis Conſilio ſubtraherent, quamdiu alieginarum Concilio frueretur, & quum petrus Epiſcopus* Wintonienſis *dixit quod bene licuit domino Regi, extraneos quoſcunque vellet vocari ad defenſionem Regni ſui & Corone, & etiam tot & tales qui poſſunt homines ſuos ſuperbos & rebelles ad debitum compellere famulatum, magnates perturbati à curia recedentes cum aliud non poterant habere reſponſum, firmiter promiſerunt ad invicem, quod pro hac cauſa que omnes tangebat uſque ad diviſionem corporis & anime, viriliter decertarent*: three Summons to Parliament were ſleighted, becauſe they doubted of their Liberty and Safety, perſiſting in their Reſolution, that unleſs the King would diſmiſs his evil Counſel, they would not only refuſe to meet in Parliament, *ſed de Communi Conſilio totius Regni ipſum cum iniquis ſuis conſiliiariis à regno depellerent, & de novo Rege creando contrectarent.* But after meeting in Parliament, they made this following Addreſs unto the King, as the Judgment of their Houſe.

Mat. Paris 381. 382. 383. in *temp.* H. 3. *Spic.* 585.

Domine Rex dicimus nobis in domino, ut fideles veſtri, quod conſilium quodnum habetis & quo utimini non eſt ſanum, nec ſecurum, ſed crudale & periculoſum vobis & regno Angliæ, *Petri videlicet* Wintonienſis *Epiſcopi, & etri de Rivallis & Complicium ſuorum.*

'Imprimis, Quia gentem Anglicanam odio 'habent, & contemnunt, vocantes eos *Proditores*

' & facientes omnes sic vocari avertentes animum
' vestrum ab amore gentis vestræ, & corda nostra
' & gentis nostre à vobis, quod apparet in *M*---
' qui melior homo est terræ vestræ, quem per
' mendacia interseminata à vobis elongantes per-
' verterunt, & per hoc idem consilium, scilicet
' per dictum Episcopum amisit pater vester Rex
' *Johannes* primo corda gentis suæ, deinde Nor-
' maniam post alias terras & in fine totum the-
' saurum exhausit -------- & fere dominium *An-*
' *gliæ*, & nunquam postea dominium habuit.

' Per idem consilium temporibus nostris, tur-
' batum fuit regnum, & venit interdictum, &
' denique factum est regnum tributarium, &
' princeps provinciarum (proh dolor) factus
' ignobilis sub tributo, & innita guerra &
' diu protracta, mortuus est pater vester quasi
' extorris, nec in pace regni vel animi, & sic
' mortem incurrit admodum periculosum.

' Per idem consilium multum Thesaurum in
' diversis bellis, & strenuos homines perdidisti,
' ob quam causam Rupellam, in ignominiam to-
' tius regni amisisti.

' Item, Perturbatio nunc imminens toti
' regno periculosa, per eorum consilium ini-
' quum accidit, quia si per justitiam & re-
' ctum judicium terræ tractati fuissent homines
' vestri, non evenisset ista perturbatio, & habe-
' retis terras vestras non destructas nec thesau-
' rum exhaustum.

' Item, In fide dicimus qua nobis astringimur
' obligati, quod concilium vestrum non est pa-
' cis, sed perturbationis terræ, quia sic crescere
' volunt qui per pacem non possunt, scil.
' per regni perturbationem & aliorum exhere-
' dationem. ' Item,

' Item, quia caſtra veſtra & fortitudinem ve-
' ſtram habent in manu ſua quaſi de gente veſtra
' diffidere debeatis.

' Item, Quia ſcaccarium veſtrum & omnes re-
' ditus veſtras & eſcheatas habent in ſua poteſta-
' te, placet talis expectatio,& quomodo vobis re-
' ſpondebant in fine ut credimus comprobabis.

' Item, Quia niſi per ſigillum veſtrum, vel
' preccptum ſine ſigillo, Petri de Rivallis, vix
' aliquod magnum negotium fit in regno, quaſi
' vos pro rege non haberent.

' Item, Quia per idem conſilium naturales
' homines de regno veſtro, de curia veſtra, ex-
' pulſi ſunt, unde timendum eſt, tam de vobis,
' quam de regno, cum videamini, magis eſſe in
' eorum poteſtate, quam ipſi in veſtra, ſicut per
' plurima conſtat exempla.

' Item, Quia Puellam de Britannia & ſoro-
' rem veſtram habent in poteſtate, & alios plu-
' res puellas nobiles, & alias mulieres nubi-
' les quas dant ſuis & diſparabant.

' Item, Quia legem terræ juratam & confirma-
' tam,atque per excommunicationem corrobora-
' tum, pariter juſtitiam confundant & pervertant.

' Item, Quia non ſervant alicui fidem vel ju-
' ramentum.

' Hæc autem vobis dicimus, & coram deo &
' hominibus conſulimus, rogamus, & mone-
' mus, ut tale Conſilium amoveatis à vobis, &
' ſicut eſt in aliis regnis conſuetudo, regnum ve-
' ſtrum tractetis per fideles homines veſtros &
' juratos de regno veſtro.

' Rex humiliter poſtulavit inducias, quod
' conſilium ſuum non poſſit tam ſubito amoveri
' donec de Theſauro ſuo rationem audiſſet.

They ſoon after, met again in Parliament, *Ut regno perturbato ſalutem proviederent*, and upon their repeated Motion, the King being made ſenſible of his Error, diſmiſſed them, and added Threats againſt *Rivallis*, that if he had not been in holy Orders, he would have put out both his Eyes. *Et ſic rex diſmiſſis iniquis Conſiliariis ſuis, revocavit ad obſequium ſuum naturales homines de regno, per quos ſperabat regnum ad ſtatum proſperum revocare.* And when he had reſtored himſelf to theſe honeſt Counſels, *Tunc primum intelligent, quod primum fuerat ſeductius, aſtutia conſiliariorum.* The Effect was no leſs happy, the civil Diſſentions ceas'd thoſe traiterous Counſellors, being removed from King and Court, put from their Truſts and Offices, publickly arraign'd before the King, impriſoned, their Eſtates confiſcated, and only ſcaped Death by the Immunity of their Order, and better Counſellors and Officers were ſubſtituted in their places.

Obſ. It may not be ungrateful from what hath been offered in the foregoing Peſident, to make ſome particular Remarks, and enquire a little into the Nature and Neceſſity of the Privy-Counſel, it having long time obtain'd a very conſiderable ſhare in the Diſpatches of the great Affairs of State.

16 Ed. 3. *m* 3. *in dors.* 27 Ed. 3. *St.* 2. 28 Ed. 3. *c.* 13. 4 *Inſt. concil. Priv. Coun. c.*

The natural and original power of this Counſel is obſcure, ſeveral have been uſed occaſionally, that have deſerved that name in reference to the Parliament (which is the moſt publick, and always had a general Intereſt in all the grand Cauſes of the Kingdom) as may be ſeen by Variety of Authority.

But

But my Intent is to ſpeak of it as it call'd the Counſel Table, and aſſembled in a Chamber, ſignifying thereby rather power of Adviſe than Judicature.

Nations do meet with Exigencies as well as Perſons, and under ſuch Condition, Reſolutions taken up by ſudden Conceit, are many times more effectual than more mature Deliberations, which require more time to their compoſing, are more ſlow in Concluſion; let ſlip Opportunies, and fall ſhort of Expectation in the end, ſuch are the ways of Debate in the grand Repreſentative of the Kingdom.

And moreover, That in putting the Laws in Execution, greater Diſcretion is required, than can poſſibly be the Portion of any one ſingle perſon, and greater Speed than can ſtand with the Debate amongſt many; ſo that without doubt the Conventicles of Counſels are no leſs neceſſary in their degree, than the Aſſembly of the Eſtates of this Nation in their grand Convention; but ſtill with this Caveat or Proviſo, That one Genius Act in both, leaſt the Motions of Government be inconſtant or inconſiſtent.

But this Counſel, however neceſſary and uſeful in the Theory, is liable to Exceſs, and ſometimes error in the Practiſe, they, are as it were, the Breath of the King's own Breaſt, which ingenders many times ſuch fervent Motions for Prerogative, they need allay, to qualifie their Heat, and the paſt Experience of it's Ambition may adviſe us, that it's pre-

tences

tences have been irregular; it was not satisfied with the Gleanings or Fragments, in the Ruines and Rubbish of the great Counsel of the Lords, but by degrees, began to challenge to hold the Ballance in all Courts of Law within their own Order, and then contrived suitable process, to assist the same, admitting Suggestions against any man on Articles at Councel-table, and thereupon, granting and awarding Attatchments and Sequestrations, to the Vexation of the People. The Parliament were occasion'd to consult a remedy to these and such like mischiefs, for their Advise operating so immediately upon the Person of the King, and by Reflection, working upon the People so far as the exercise of their Power extends; the Parliament did interpose to qualifie their Influence, that it might be beneficial to the Nation, so that where they have observed the major or more considerable part of that Assembly, drawing towards a Faction or Design (as an act of Duty) they have recommended in their Recesses such persons to the King, as might reduce those Councels into a better form, and frame them as the Epitome and to the exemplar of the grand Counsel of the Kingdom; and least they should corrupt the King's Desires, or pervert his Purposes by flattering and false Advise, they have order'd Inquisitions into their Actions, and laid Restraints upon their Practises, and censur'd their Miscarriages. For though 'tis said, occasional Inquiries breed ill blood, though no Attainder be, and indeed one not

14 Ed. 3. n. 55.
50 Ed. 3. n. 10.
1 R. 2. n. 51.
3 R. 2. 34.
5 R 2. 17.
6 R. 2. 19.
8 H. 6. n. 8 12. 14.
5 H. 4. 16.
11 H. 4.
15 Ed. 3. 3.
2 H. 6. n. 15.
29 H. 6. n. 16.

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eaſily or other undertaken with good Succeſs the contrary would work the Cure, and not be maligned, being once reſolved into a common Courſe. 'Tis moſt certain, if the motions of the grand Officers of the Kingdom be irregular and unqueſtionable, it matters not what the Rule be.

The Arch-biſhop of *York* was condemned of high Contempt againſt the King to the Diſinheriſon of his Crown and Dignity, for excommunicating the Biſhop of *Dureſme* in the Eccleſiaſtical Court for a temporal matter, and adjudg'd to pay 4000 Marks unto the King. *Parl.* 21. Ed. 1. *pla.* 17.

This Court may not only puniſh according to the uſual Penalties of the Law, but they may aggravate the Sentence, and encreaſe the Puniſhment, as in the caſe of *John Hall*, who was condemned to be hang'd, drawn, and quarter'd, for murthering the Duke of *Glocester* bewixt two Feather-beds, in 1 *Hen.* 4. 14 Ed. 1.

The Biſhops and Clergy by the Inſtigation and Inhibition of the Pope, refuſing to aſſent to ſupply the King with any Aid or Tax, were, by Judgment of the Lords, put from the Kings Protection, and the Parliament held without them.

Richard, Earl of *Arundel*, to an Impeachment of high Treaſon, pleaded his Pardon, which Plea was diſallowed, becauſe his Pardon was revoked in Parliament, but he inſiſting thereon, without betaking himſelf to other Defence, had Judgment, as convicted of the Crimes. *Exact Abrid.* 376. 7. 8.

William

William de Valentia Brother in Law to *Hen.* 3. lately baniſhed out of the Realm by Judgment and Sentence of the Lords, was not admitted to return, though in Company with the Prince; but on Condition, *Ut Baronum proviſionibus in omnibus obediret*, which he afterwards refuſing to obſerve, *Unanimiter Conjurarunt quod nunquam Regi conſentirent in uno, donec quoſdam non nominandos à ſuo Conſilio amoveret*, in purſuance whereof, they put themſelves in Arms, until the King baniſhed the Delinquents, *&c.*

Ed. 2. The Lords gave Judgment againſt the *Spencers*, for compelling the King to rule by Rigor, after the irregular Motion of their Wills, for withdrawing him from harkening to the Adviſe of his Lords, for hindring Juſtice, and for puniſhing by penal Laws, which Judgment was confirmed by Parliament, and had the variety of being repealed and confirmed diverſe times, until at laſt it ſtands in Force.

Obſ. Penal Laws are good Remedies if they be uſed *in terrorem*, but if enforced beyond that Rule, the Remedy proves worſe than the Diſeaſe: in their firſt Inſtitution, they are Forms of Curteſie from the People to their King, but in the rigorous Execution of them are Tryals of Maſtery in the King over the People, and are uſually laid up or kept in memory, for their Promoters againſt a day of reckoning.

11 H. 7. *cap.* 3. repealed by 1. *H.* 8. *c.* 6.

The Petitions againſt *Empſon* and *Dudley* the Caterpillars of the Kingdom, were feelingly regarded by the King, and a Proclamation iſſued

issued for encouragement of all Complainants though they had the King his Fathers hand to justifie their Actions; and the Pretence of their Employment was for the Service of the Crown.

In the 11*th.* of *Richard* the Second, the Parliament then meeting at *Westminster*, entring into the Debate of publick Business, and in Aid of good Government, the King disgusting their Proceedings being too severe against the great Ministers of State, then in Favour, forebore his Presence, in their Assembly, contrary to Law and Use, received in Message from the Lords, *Quod nisi maturaret, juxta conditum, quod elegerint alium sibi regem, qui vellet & deberet obtemperare Consiliis dominorum.* And when on the next day, the King came into the House, *Dixerunt pro honore suo & Regni commodo, oporteret ut proditores, susurrones, adulatores, & malefici detractores, à suo pallatio & comitativa eliminarentur.* Whereupon, sundry Lords, Bishops, Clergy-men, Knights and Ladies, were expell'd the Court, others imprisoned, in order to answer their Offences in Parliament: in the number of Delinquents, *Michael de la Pool* Earl of *Suffolk* Duke of *Ireland*, *Trefilian* Chief Justice, *&c.* were condemned to Death or Banishment, and forfeiture of Lands and Goods, and their Offences are on Record, for that during the King's Minority by ill Counsel of those near his Person, there were great Oppressions and Miscarriages in Government, and whereas in Aid thereof, in the 10*th.* of the same King, at the Parliament then, a Commission was award-

10 R. 2. c. 1. 11 R. 2. 1. 2. published 27 *Aug.* 1622.

awarded to twelve Peers, to ſee to the better Execution of the Laws, and regulating the former Miſdemeanours and Abuſes, the endeavouring to vacate or fruſtrate this Commiſſion, authoriſed by the Parliament, pretending it granted in Derogation of the royal Power, was the chief Crime for which they ſuffered, though they alledged the Opinion of the Judges for their Indemnity and Juſtification.

Obſ. Private Families are no farther under publick Law, than in Relation to the publick Peace, to puniſh after Breach made, but the Families of Kings are looked upon by all, in Relation to the Honour and Profit of the publick, and who by their nigh Attendance upon his royal Perſon, may have ſuch prevailing Influence over his Actings, as may affect the publick with a prejudiced and malevolent Aſpect, if they be not ſuperſeaded by a reſtraining Power. Moreover, the royal Family trenching deep upon the honour of the Kingdom, and Purſes of the People (who are concerned to ſee the ſame accommodated ſuitable to the ſtate and port which the Nation would ſeem to carry in the World) have been inſpected, and queſtion'd in Parliament; ſo that the King's Confeſſor and other familiar Domeſticks, have been removed and puniſhed: Mr. *Noyes* Collection printed by Mr. *Pryn*.

5 R. 2. *n.* 31. 11 R. 2. *n.* 23. 5 R. 2. *n.* 17. 18. *Rot. Parl.* 3. Ed. 3. *n.* 10. to 17. 5 & 6 R. 2. *Rot. Parl.* 4 H. 4. 11. H. 4. *&c.*

Obſ. So that we may infer, though Juſtice was ſometimes perverted or obſtructed, and the very Foundation of our Laws and Liberties, aſſaulted and undermined, and all the Efforts

Efforts of Artifice, Strength, and Policy, practiced and encouraged, that any way ſeem'd to gratifie or nouriſh the Ambition and Exceſſes of ſome diſtructive Minions of the State, the Wiſdom and Integrity of our Forefathers, the vertue of the Nation did at laſt manifeſt it ſelf, and did oppoſe the Ruine, and has hitherto, left us, our Laws, and their happy Examples, for Imitation in all deſigns, againſt their Safety. I willingly and of purpoſe omitted to tranſcribe the Stories of ſome of the perſons of late mentioned, more at large; and of the Methods uſed to ſecure them ſometime from the Juſtice of the Nation, leaſt I might have been cenſured to have introduced their Hiſtory to Reflection, I find this ſeverely charged for one, *Quia Regem ducebant pro ſuæ voluntatis arbitrio in tantum, quod nec honos* &c. *nec quiequam valuit expedire ſine horum concilio & favore.*

The Lords Spiritual and Temporal claimed their Franchiſes and Priviledges, *viz.* That all weighty matters that ſhould be moved in the Parliament, touching the Peers of the Land, ought to be diſcus'd, adjudg'd and determined by them by the Courſe of Parliament, and not by the Civil, nor yet by the Common-Law of the Land, uſed in other Courts of the Realm, the which Claim and Liberties, the King moſt willingly allowed and granted thereto in full Parliament. As in the caſe of the Earl of *Northumberland*, when the King took his Petition for Pardon into his particular Conſideration, aſſiſted only with his Judgment

11 R. 2. *Rot. Parl.* n. 6. 7. 5 H. 4. *Rot. Parl.* 10. to 14.

es, the Lords made their Proteſtation, that the Order thereof belongeth only to them, as Peers of Parliament, to whom the Judgment appertain'd, and in that caſe adjudg'd accordingly.

4 *Inſt.* 23. 3 *Inſt. p.* 148. In the Parliament of the 18 and 24 *Jacob.* Sir *Francis Bacon*, Lord Chancellor of *England*, Earl of *Middleſex*, Lord Treaſurer of *England*, were impeached and convicted of Bribery, Corruption, and other Miſdemeanours, removed from their places, fined (*Middleſex* 50000. *l.*) impriſoned, and withal made incapable of any Office, and thus cenſured by Judgment of their Peers.

Their Power lies in Caſes of Writs of Error in the Diſputes of Commoners, as well as Peers, upon erroneous Judgments, touching their real or perſonal Eſtates, Lives, Limbs, or Liberties of perſons, upon indictment or Attainder, in all which Caſes, the Lords are Judges, the Returns upon the Proceedings on ſuch Writs, are only before the Lords in the upper houſe, *Secundum legem & conſuetudinem Parliamenti.* I ſhall not enlarge in thoſe memorable Caſes of *Robert* Duke of *Normandy*, or of Earl *John*, afterwards King of *England*, and Duke of *Clarence* the King's Brother.

Speed. 662. 19 Ed. *d.* *El. Henc.* *Spee.* Ed. 4.

I ſhall only offer ſome few Authorities, where they have given Judgment in the caſe of the Commons, and paſs to my third Conſideration of the Parliaments power.

Judge *Thorp* for taking Bribes, to the value of a 100. *l.* was ſentenced to be hang'd, *Quia ſacramentum domini Regis, quod erga populum ſuum*

ſuum habuit, cuſtodiendum fregit malitioſe falſe & rebelliter, that Law declared to continue in Force only againſt ſuch, (*viz.* Juſtices) *Qui prædictum Sacramentum fecerunt & fregerunt, & habent leges* Angliæ *ad cuſtodiendum.* This Judgment was afterwards confirmed, their Oath is yet the ſame, but the Law ſomewhat altered, as appears in Rotul. Parl. the eleventh of *Henry* the Fourth, *nu.* 28. *Cook 3 Inſt.* 146. *Exact Abrid.* 79. 24 Ed. 3.

Henry de Bathonia a Juſticier, ſentenc'd for Bribery, *Et quod unum facinoroſum convictum & incarceratum, abire permiſit impunitum opimus reſpectus muneribus*, and fined 2000 Marks. *Mat. Paris* 785.

Sir *Thomas Wayland* Lord Chief Juſtice of the *Common-Pleas*, attainted of Felony, for taking Bribes, his Lands and Goods confiſcate, and he baniſhed the Kingdom, as unworthy to live in that State, againſt which he had ſo highly offended.

Obſ. Though Covetouſneſs in a Judge is a heighnous Crime, and ſo deſervedly puniſhed, yet Ambition is the more dangerous Extream or Error, for it is violent, and runs, while Covetouſneſs is making of a Bargain; and there is no ſuch Bondage, as when Laws of Freedom are miſinterpreted, to make men Slaves; for unjuſt Proceedings on unjuſt Grounds, are double Injuſtice. And 'tis undeniable, that arbitrary Judgments deſtroy the Common Laws, and in them the two great Charters of the Kingdom, which being once loſt, we have nothing left, but the bare falſe name of Liberty. *Proem to 2 Inſt. Coo. p. 2. & 3. Hub. de Ric.*

This high Eulogie is given to *Richard* the First *Spe. 1751. n. 11.*

First, thrt he did ſhew his Care and Love of the *Engliſh* Nation, as alſo of Juſtice it ſelf, for that many of his Juſticiers were of the honourable Peers of the Land, and not men bred up, or formerly inured to make Juſtice, or their own Tongues venal for a Fee. And that which was obſerved of Sir *Robert Treſilian*, Chief Juſtice, that he was a man ready under the King's Protection to deliver Judgment without reſpect of Titles, is ſaid to be the conſtant humour of the Lawyers, to judge according to the Will of the greateſt.

Indeed, This high and honourable Court of Peerage, has ever been the Rampart and Defence againſt ſuch violent Attaques, and the ſure Scourge of ſuch as durſt attempt againſt them, as might be evidenced by their proceeding, yet in memory in the great Caſes of Shipmoney, Committments, *per ſpeciale mandatum Domini Regis*, &c. 1627.

Sir *Thomas Haxey* was adjudg'd to dye in the twenty firſt of *Richard* the Second, for preferring a Petition to the Commons, againſt the Vices and outrageous Expences of the Court, by Biſhops and Ladies; but afterwards, in the firſt of *Henry* the Fourth, the King with the Advice and Aſſent *de toutes les ſeignieurs ſpirituels & temporels*: Upon his Petition, and the Petition of the Houſe of Commons, ſhewing, that the firſt Judgment was, *Encontre droit & la Cours, quel avoit eſtre uſe devant in Parliament & in anientiſſiment des Cuſtomes, des les Communes*, order'd and adjudg'd, that the Judgment againſt the ſaid *Thomas* ſhould be void, and he reſtored to his name and Fame notwithſtanding. This

* *Exact Abrid.* 36. 2. 1 H. 4. *Rot. Parl. n.* 91.

This next and laſt is in a caſe of a Duel by order between Sir *John Anſley* Knight, and *Thomas Ketterington* Eſquire, for a Crime committed beyond Sea, not here tryable; at which the King and Parliament were Spectators, which for it's Rarity I have inſerted.

On the Morning of the day appointed, they fought before the King, Lords, and Commons, till both were tyred, and lay tumbling on the Ground, where the Squire got upon the Knight, as if he had the Victory; others ſaid, the Knight would riſe again, and renew the Combat, and worſt the Squire; *Interea Rex clamari pacem precepit & militem errigi*, the Knight refuſed to be lifted up as the Squire was, deſiring he might be laid upon him, for he was well, and would gain the Victory, if he was laid upon him again: when he could not obtain his Requeſt, being lifted up, he went chearfully to the King without Help, when as the Squire could not ſtand, but as two held him up, and thereupon was ſet in a Chair to reſt himſelf; the Knight when he came before the King, *Rogavit eum & proceres, ut ſibi illam concederent gratiam, & iterum eum in loco quo prius, poſſet reponi, & armigerum ſuper eum, Rex vero & proceres cum vidiſſent militem tam animoſe, tam vivide bellum repetere, & inſuper magnam ſummam auri offerre publice, ut id poſſit effici, decreverant eum iterum reponendum, & armigerum ſuper eum, modo univerſaliter ſervato, quo jacuerant ante proſtrati.* But the Squire in the mean time in a Swound fell out of the Chair, as dead, between the hands of tho'e *Walſ. hiſt. Ang.* 245 &c.

that ſtood by him; whereupon, many running to him, chafed him with Wine and Water, but could not recover him till they pull'd off his Arms, *Quod factum & militem victorem probavit & armigerum eſſe victum*; after ſome ſpace, the Squire reviving, opened his Eyes, and began to lift up his Head, and to look terribly on every one that ſtood round him, which the Knight being inform'd of, went preſently to him in his Arms, which he never put of, and ſpeaking to him, *Et proditorem & falſum appellans, & querebat ſi iterum vellet Duellum repetere ille vero nec ſpiritum habens nec ſenſum reſpondendi, clamatum eſt pugnam finitam & ut quiſque ad propria remearet*, the Squire was carried to Bed, and died the next morning.

To conclude, The propoſition is not only proved, but the Reaſon given in the Law, in the firſt of *Henry* the Fourth, which ſays, that the Houſe of Peers being aſſiſted with the Adviſe of all the Judges of *England*, the Kings learned Counſel, and others, able to adviſe them in all Criminal, Civil, and Eccleſiaſtical Matters and Caſes that come before them were in this Regard, thought fitter by our Anceſtors and Commons themſelves, to have the principal and ſole power of Judicature in all civil and criminal Cauſes, as well of Commons as Peers, that are proper for the Parliament Judicature by way of Conſent or Redreſs. But in the 4. *Edward* the Third, the Lords by Proteſtation, with the King's Aſſent, did Judge and Decree, that though in ſome weighty, and Caſes of high Conſequence

quence, they had given Judgment againſt the Commons, yet for the time to come, ſhall not be bound or charg'd to render Judgment upon others, who are not their Peers, nor yet to do it, but upon the Peers of the Land, but that they ſhall from henceforth be quitted thereof.

Sometimes the King did intermeddle in Cauſes of the Peers, admitting of a Hearing before himſelf, and giving Sentence without the Lords, which they proteſted againſt, as contrary to their Priviledge, and in Derogation of their Power, as in the Caſe of *William de la Pool* Duke of *Suffolk*, where the Lord Vicount *Beaumont* in behalf of the Nobility, and by their Advice, Aſſent, and Deſire, did manifeſt that this that ſo was decreed, proceeded not by their Adviſe and Conſent, but was done by the Kings own Demeaner and Rule, wherefore they beſought the King, that this their Saying, might be enacted in the Parliament Roll, for their more Declaration hereafter, with this Proteſtation, that it ſhould not be nor turn in Prejudice, nor Derogation of them their Heirs nor of their Succeſſors in time coming, but that they may have and enjoy their Liberty, as they and any of their Anceſtors and Predeceſſors had, and enjoyed before this time.

26 H. 6. *Rot. Parl. in* 14. *Coo.* 3. *Inſt.* 22 North. *Caſe.* 5 Hen. 4.

So that it is fully proved by Law and Preſident, that this is the moſt ſupreme Court of Judicature, for the matters therein adjudged, *viz.* all weighty matters to be moved in Parliament, 2. For the manner of their Proceedings, as neither guided or confined to the Rules of the common or civil Law,

11 R. 2. *Rot. Parl. n.* 6. 7. 5 H. 4. *Rot. Parl.* 10. 11. *&c.*

Sed secundum leges & consuetudines Parliamenti.

Ki. Car. 1. Anſ. to the 19 Prop.

I have now paſs'd my firſt and ſecond Conſideration of the parliamentary power, and I hope I have fully proved in the firſt, that by undoubted Right, the eſtabliſhed Laws of this Realm, and the Preſidents of all Ages, they are in theſe two Notions, eſſentially concerned in the Government, and under the firſt of theſe Acceptations, they as the great Counſel, ought to adviſe and conſent, 1. by way of proviſion, of what Supplies may by them be judged expedient and neceſſary to ſupport our publick Safety. 2. By way of prevention, to obviate and oppoſe, or otherwiſe to adviſe, to divert the Injuries and Aſſaults that may probably occaſion or introduce a general Ruine.

3. By way of Caution, for the ſupporting of their power, and the preventing the Innovation upon their Rights, they may unite themſelves by Oath, Aſſociation, &c. In the Maintenance only of their Laws and Freedoms.

Anſw. to the 19 Propoſit.

2. That under the ſecond Conſideration, as the great Court of Judicature of the Kingdom, they have Power to declare and execute the Laws for the ſame ends, and are in this Capacity, conſtituted and ſuppoſed to be an excellent Bank or Skreen between the Prince and People, to prevent Oppreſſion and Injury from the Prince, and to hinder Irregularity and diſorderly Commotion in the people.

I ſhall now enter upon my third Diſtinction of the parliamentary Power, as it is in the Legiſlative Capacity, Conſiſting of the Agreement and Act of all the three Eſtates, King, Lords, and Commons,

mons, to make it binding, it imports no leſs than the united Conſent of all and every Perſon of the Kingdom; and under this Notion it's power is unlimitted and univerſal, it's Authority is the moſt unerring and firm Support of Monarchy and Government, and has been ever uſed as the only expedient, to accommodate the Differences of Pretenders and Competitors, to arbitrate and decree not only the Right and Poſſeſſion, but the Inheritance and Reverſion of the Regal Power, to ſuccor and defend the King and Kingdom againſt all Poſſibility of Injury or Incroachment that might be pretended againſt or uſurped upon it or his Authority; to decree the Nations Liberties, aſſertain Property, and to eſtabliſh an unqueſtionable Peace and Security to all the people, both from the danger of Grievances at home, or the Aſſaults of foreign power.

In this Capacity, it hath power above the Law it ſelf, having power to alter the Common Law of *England*, to declare the meaning of any doubtful Laws, to repeal old Patents, Grants or Charters, and Judgments whatſoever of the King, or any other Court of Juſtice, if erroneous or illegal, not only without, but againſt the King's perſonal Conſent, ſo far as finally to oblige both King and People, to puniſh Offenders of all ſorts, corrupted Religion, either to diſanul or reform it. *Ralph Hollingiſh*, *Cap.* 8. *vo.* 1. *p.* 173.

I ſhall confine my Diſcourſe to thoſe matters that relate to the Diſpoſition and Eſtabliſhment of the Imperial Crown, in the following preſidents you may read the Laws of the title to the

Crown, and the orders of the power thereof.

The good Laws we enjoy, and Priviledges ſecur'd to us by our Statutes, are Evidence ſufficient to prove their Authority that made them.

During the time of the *Saxons* and *Daniſh* Rule, nothing will appear more interrupted and uncertain, than were the Titles and Succeſſions of their Kings neither can we eaſily conclude, or aſſuredly define, under what Rules they transferred the poſſeſſion of the imperial Crown; where Conqueſt and Election were ordinarily preferred to Inheritance and Deſcent. To *Alfred* the brave, the 24*th*. Monarch of the *Engliſh*, ſucceeded *Edward* the Firſt, his Son, and after him, *Athelſtan* his Baſtard was elected, and preferred before *Edmund* his Legitimate Iſſue. And though *Edmund* after his Diſceaſe, entred upon the Government, yet his two Sons *Edwy* and *Edgar* during the Life of their Uncle *Edred*, and by his interpoſing were defeated of the Kingdom: Afterwards, by the Favour of the People, they were ſucceſſively inſtated in the Throne, and the Sons of *Edred* ſet aſide. In the ſpace of two years, *Edwy* was depoſed, and ſo made ſpeedy way for the Pretences of his Brother *Edgar*, whoſe Son, by his firſt Wife, named *Edward*, was barbarouſly murthered, to make way for *Ethelred* Brother by a ſecond Venter. The Character of whoſe Reign, was not unſutable to the means he uſed to obtain the Scepter; his Entrance was by Blood, the middle miſerable, and the end Confuſion. Nor was the Succeſs of his Poſterity more proſperous, for *Edmund* his Son ſurnamed *Iron-*

Daniel 24.

ſid

side, first lost half his Kingdom, and afterwards, the whole was made the Purchase of *Canutus*, by his Conquest; who the better to ensure his new-got State, banished, and designed to murther the two Sons of *Edmund* together with his Brother *Edwy*, to prevent all future Competition and Disturbance, yet could not insure the Kingdom to his lawful Issue *Hardicanute*, against whose Issue, *Harold* being a Bastard, usurped the Crown: upon whose Death, the *English* Nobility enacted, that none of the *Danish* Blood should any more weild the *English* Sceptre. *Spe.* 338. 394 *Sp.* 3.

After twenty six years, the Crown again reverted to the *Saxon* Race by the Election of *Edward* call'd the Confessor, (Son to *Ethelred*, who came in by the Murther of the right Heir) to be King. After whom again *Edgar Abeling* was outed and disappointed by *Harold* Earl of *Kent*, who was conquered and subdued by *William* the First, (commonly miscall'd Conqueror) who in his last Will expresseth, he had gotten a royal Diadem, that none of his Predecessors wore, not by right of Inheritance, but by heavenly Grace, and did not constitute any Heir unto the Realm of *England*, but commend it unto the everlasting Creator, whose I am; for I possess not that Honour by any Title of Inheritance, but by the Instinct of God, the Effusion of Blood, and the Perjury of *Harold*, yet, wish, if it be the Will of God, that *William* my Son may flourish in the Throne of that Kingdom, yet notwithstanding his Bravadoe, he rather conquered *Harold* than the Kingdom, to which he *Spe.* 432. 54.

was

was admitted by Agreement and Stipulation.

Fox vol. 1. p. 217. *Spee.* 432. 54. Of this firſt *William*'s Title and Poſſeſſion of the Crown I need not add, he took an Oath at Coronation, to confirm King *Edw.* 1. Laws beyond what has been before alledged, ſo content my ſelf to mention the matter ſince that period.

Spee. 449. *William Rufus*, ſecond Son unto his Father, his eldeſt Brother then alive, by his Father's laſt Will, and the Election of the States and People attain'd the Crown, and was in Choice preferr'd before his Brother, by the means of the Clergy firſt, and after of the People, and continued to enjoy the ſame againſt his Brother, upon a Compoſition agreed in Parliament betwixt them, *viz.* To pay D. *Rob.* 3000 Marks of annual Penſion; for tho the Crown was deſigned to him by his Father, the Right and Poſſeſſion was left unto the people to determine and maintain; and by Oath did Condition to abrogate the hard Laws of his Father, promis'd to obſerve Juſtice, Equity, and Mercy, throughout the Kingdom in every Buſineſs, and eaſe them of their hard Taxes, if they would chuſe him King.

Mat. Par. hiſt. p. 12. 13. &c.

Mat. Par. 52. 53 54. After the Death of this ſecond *William*, *Robert* Duke of *Normandy*, being then abſent in the holy Land, gave way to *Hen.* 1. to claim the Crown, *Et Congregato* Londiniis *clero* &c. *& populo univerſo promiſit emendationem legum, quibus oppreſſa fuit* Anglia *tempore patris ſui*, &c. *ſi illum in Regem ſuſciperent & patronum. Ad hæc clero reſpondente & magnatibus*, &c. *Quod ſi animo volenti ipſis vellet concedere & Charta ſua Communire illas Libertates & Conſuetudines antiquas*

Speed 450. 1.

tiquas quæ floruerunt in regno tempore Regis Edwardi, *in ipsum consentirent, & in Regem unanimiter elegerint & consecrarent, & postea Communi Consilio regni Rex est Coronatus*; And the same year marryed *Maud*, Daughter to the King of *Scots*, by the Advice and Consent of Parliament.

Duke *Robert* after his Return from the Holy War, making a demand upon his Brother, of the Kingdom, they submitted the Dispute unto the Parliament, by whose Authority it was decreed, *Quod* Robert *propter manifestum jus quod habuit ad regnum possidendum*, should yearly receive from *England*, 3000 Marks, and that the longer Liver of them should be Heir unto the other, if he dyed without Issue Male, *& hoc per magnates* 12 *juratum fuit utrumque*. Duke *Robert* afterwards, contrary to the late Establishment, attempting against his Brother, became his prisoner, and was by the Peers, *Puderose & immani morti adjudicatus*, Henricus *vero frater ejus non sustinens Ignominiam tantam protendere in sanguine suo instituit Barones & impetravit ab eis quod prædictus* Robertus *debet exoculari & execari cum bacillo ardenti, sicque apud* Lincolniam *perpetuo carcere mancipatus*, a heavy Sentence against the King's Brother, but unjust if the Crown be inheritable meerly.

Mat. Paris 55.

De Eudat. Angl. lib. 2. ca. 8.

Obs. The first *William* came in by Arms, under the Color of a Title, 2. by a kind of Title under the Colour of Arms, the last by Favour, but all of them entred by Election, Capitulation, or Stipulation.

Stephen Earl of *Bloyes*, (*Maud* the Empresses Daughter, and Heir to the late *Henry*, and her Son, being both alive) steps into the

Throne

Mat. Par. 71. 73. *Speed in com. R. Stephen* 468. &c. Throne, and lays a fast Gripe upon the Crown and Scepter, *Et Communi Consilio* Angliæ *Rex est electus & Coronatus, & omnes qui filiæ Regi* Henrici, *& suis Heredibus juraverunt, fidelitatem & consensum* Stephano *prebuerunt*; And in persuance of his Oath of Coronation in his Parliament at *Oxford*, he confirm'd the Charters of the peoples Laws and Liberties with several beneficial Clauses and Additions in the Charter, and in it acknowledged his Title by Election. The Disputes and Differences between himself, *Maud*, and her Son *Henry*, touching the Possession, Right, Descent, and Inheritance of the Crown, were neither few nor weak. On reference they were accommodated in a Parliament at *Wallingford*, wherein it was enacted, that *Stephen* should adopt and constitute *Henry* his Son, Heir and Successor to the Crown, immediately after his Discease, that K. *Stephen* should quietly possess the same during Life, and that *Henry* should be Chief Justice, and Ruler of the Kingdom under him.

Malm. p. 179.

Spet. 497. *Mat. Par.* 82. 83.

Speed 484. *Henry* the Second after the Death of *Stephen* enters into the Government by the former Agreement, Adoption and Decree in Parliament made betwixt K. *Stephen*, the Nobles, and himself; his Mother being alive, to whom the present Claim by Inheritance did more nearly appertain.

Richard 1. succeeds his Father, (but his entrance, say some, was upon an Election in the life-time of K. *Henry*, the which the Nobility confirm'd, by rendring Homage to him, in the life-time of his Father, the disquiet this Election occasion'd to his Father, is remarkable, and makes it questionable, whether he much depend-

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ed on his inheritable Title; and he may be rather said to come in as Succeſſor or Surviver, taking Poſſeſſion in his Fathers Life time againſt his Will of what was deſign'd to him afterwards by ſpecial Compact, at his Coronation ſwore, that all the days of his Life, he would bear Peace, Honour, and Reverence to God, and holy Church, and the Ordinances thereof. 2. That to the people committed to his Charge, he would exerciſe Right, Juſtice, and Equity. 3. That he would aboliſh naughty Laws and Cuſtomes, if any were brought upon his Kingdom, & would enact good Laws, and the ſame in good ſort keep, and without Male engine. *Speed* 514. 5.

We may hence conclude, he did not believe the Inheritance of the Crown do deſcend of Right, and unavoidably, becauſe he deviſed the ſame by Will, to Earl *John* his Brother, againſt his Nephhew *Arthur*'s Right, Heir to his Brother *Geofry* Duke of *Britain*. *Speed* 529. 69.

Hen. 2. by Conſent of Parliament at *Oxford*, diſpoſed the Crown and Kingdom of *Ireland* to *John* his younger Son, although he only uſed the Stile of Lords. *Hoved. pars poſt p.* 156.

The next in Story is King *John* who came to the Crown, or at leaſtwiſe took it (notwithſtanding his Brother's Will, and againſt his Nephew *Arthur*'s Right, whom he after murder'd) by Election, and was confirmed by Conſent of Parliament; the inauguration Speech made by the Arch-biſhop at the Solemnity of his Coronation, ſets forth his Title, *Quod nullus prævia ratione, alii ſuccedere habet regnum, niſi ab univerſitate Regni unanimiter invocatus, ſpiritus gratia electus, verum ſi quis ex ſtirpe defuncti Regis aliis prepolleret, promtius & promptius in electionem ejus eſt conſentiendum, at preſaga mente certificatus, quod ipſe* Johannes *regnum* *Mat. Par.* 189. 190. *Hiſt. Ang.* p. 189. *Speed* 532.

nium & Coronam Angliæ *foret corrupturus & in Confuſionem præcipitaturus, & ut ne haberet liberum habenas hoc faciendi ipſum electione non ſucceſſione hæreditaria eligi debere affirmabat, cum conſenſu conſilii unctus eſt in Regem, & triplici involutus eſt ſacramento, quod videlicet ſanctam eccleſiam, & ejus ordinatos diligeret & eam ab incurſione malignantium indemne conſervaret, & quod perverſis legibus diſtructis bonas ſubſtitueret, & rectam juſtitiam in Regno* Angliæ *exerceret, deinde exhortatus & ſtricte prohibitus in parte dei ne honorem hanc accipere preſumaret, niſi in mente habeat, opere quod juraverat adimplere, ad hoc ille promiſit ſe per auxilium dei bona fide ea quæ juraverat ſervaturum.* After which Speech, he was unanimouſly elected, as well in regard of his Merits, as of his royal Blood.

Daniel 127. 128.

Coo. 4. Inſt. p. 13. 14. 40 *Ed.* 3.

King *John* having made an ignoble and unkingly Reſignation and Submiſſion of his Crown and Kingdom to the Pope, to be held under the annual Tribute of 1000 Marks. The Pope ſome time after, by his Miniſters making a demand of the propoſed Arrears of the ſaid Covenanted Tribute upon his Succeſſor *Ed.* 3. had in anſwer from that King in the Aſſembly of Parliament, that neither K. *John* nor any other, could put himſelf, or his Realm, or his People, into Subjection or Tribute unto the Pope, without their common Aſſent; that the Submiſſion he made unto the Pope, was without their Aſſent, and againſt his Oath at his Coronation; and that if the Pope by Force or otherwiſe would attempt to enforce the King or his Subjects, to render him the Services and annual Tributes for *England* and *Ireland* granted to him by K. *John*, they would reſiſt and oppoſe him with all their power; and moreover, that they will ſtand with the Kings Crown and Royalty

alty in all Cases of the Pope's Usurpation, clearly in derogation of the King's Crown and Royalty in all points with all their power.

Embassadors were sent into *France*, to treat, from the Parliament or Body of the Kingdom, for that Provinces incorporated into the Sovereignty of *England*, could not, without Injustice, be abstracted from a Nation's common Interest, upon whatever pretences against any particular; for which cause, the patent of the Dukedom of *Aquitane* to *John* Duke of *Lancaster*, as also another to *Robert de Were* Duke of *Ireland*, were not allowed sufficient to entitle the Patentees until their Grants were made authentick, & confirm'd by Parliament. *Speed* 546. *Rot. Parl.* 13 *R.* 2. *no.* 21. *Coo.* 4. *Inst.* 357.

Hen. 3. an Infant of nine years old, was after the death of his Father King *John*, elected to the Kingdom, *Arthur*'s Sister being alive and in prison, who was Heir by an elder Brother too, but all the promises and pretences of Allegiance made to *Lewis* of *France* in the Life-time of his Father, they waved and utterly renounced, and betook themselves to the Obedience of King *Hen.* *Sicque* *nobiles universi & castellani eo multo fidelius quam regi* Johanni *adhæserunt, quia propria patris iniquitas, ut cunctis videbatur filio non debet imputari*, and did agree because he was King *John*'s natural and eldest Son, to appoint him their King and Governour. *Speed* 537. 2. Mat. Par.

It happens too oft, that where the Throne is full of a King, and he great in the Opinion of his own Sufficiency and Power, a Parliament is looked upon as a Fashion out of Fashion, and us'd for little other than a Shift, when Kings have imbarras'd themselves in Troubles and Incumbrances; but where the Crown is too heavy for the Wearer, through Infancy or Infirmity, the Parliament is look'd upon, as the chief Supporter, in the maintaining, both the Honour and Power of that Authority, that otherwise would fall under Contempt. And I may affirm, there is not one President

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of any disagreeing humour in the people, in the Infancy or tender age of any King, for where the Principle of Government reflecth on the Representative of the People, there the Government continues still the same, both for Wisdom, Strength, & Uniformity, for the people cannot be admitted in Minority, tho the Monarch by Descent may in such cases, or in absence, the Kings have been served by Officers of several Titles as Warden, Lieutenants, but more lately, in the Title of Protectors of the Kingdom. And tho they have been made by Patent or Commission (and of persons ordi-
1 Hen. 6.
4 H. 6. n. 8.
33 H. 6. 34.
25 H. 8. 22.
28 H. 8. c. 7.
35 H. 8. c. 1.
darily, the most immediate Off-spring of their King) yet their Authority was subject to the perusal and Scrutiny of the Parliament, who according to occasion, chang'd, enlarg'd, or abridg'd both it and them; as the Parliament added the Title of Protector, to that of Lord Warden, formerly confer'd upon the Duke of *Bedford*, and afterwards in his Absence, confer'd the same upon the D. of *Gloucester*, with a *Salvo* to the others right: so was *Rich.* D. of *York*, declared Protector, in the 32 *H.* 6. *Authoritate Parliamenti.* On the contrary, they divested the Bish. of *Ely*, and outed him of that Power, in *temp. Rich.* 1. and in his Absence, as may be read before.

The Resignation of *Ed.* 2. and the Election of his Son *Ed.* 3. not to trouble the long Record of Parliament, is express'd in the subsequent Writs sent to command the peoples Fealties unto the young elected King, *Quia Dominus* Ed. *nuper Rex* Angliæ *pater noster de communi consilio & assensu prælatorum & comitum, nec non Communitatum totius regni prædicti, spontanea voluntate amovit se à regimine dicti Regni volens & concedens quod nos tanquam ipsius hæres, &* Walsingham 328. *primogenitus regni gubernationem assumamus, nosq; ipsius patris nostri beneplacito in hac parte, de consilio & advisamento* &c. *suscepimus, dicti Regni & fidelitates accepimus ut est moris* &c. We are willing and shall be always ready to administer full Right to all Complaints of poor and rich, in our Court of Justice.

Spet. 669. Sir *William Trussel* Procurator of the Parliament, spake to the divested King, in the name *Totius Communitatis*, as follows: I *William Trussel* in the name of all the men in the Land of *England*, and of all the Parliament Procurator, I resign to thee *Edward* the Homage that was made to thee sometimes, and from this time forward, now following, I defie thee, and prive thee of all Royal Power, and I shall never be tenJent to thee for King, after this time. It was decreed in Parliament, his Son *Edward* should be elected and crown'd, and that his Father declared himself unfit to govern, for the following Reasons.

Parl. at West. 16. Jan. 1325.

1. Be-

1. Becauſe he ſuffered himſelf to be Governed by Evil Counſel to the dammage of holy Church and his own diſhonor, and for that he would not receive advice of the Great Councel of his Realm, or ſuffer any amends to be made for Injuries done, or wrong ſuſtain'd.

2. By the Influence and Inſtance of the ſame his Evil Councel he acted to the great injury of the Realm, by Committing Outrages and other Inconvenient undue and illegal practices.

3. By male Adminiſtration he had loſt the Realm of *Scotland*, and Lands and Territories in *Gaſcoyne* and *Ireland*, left in peace to him by his Father.

4. By Cruel Uſage and Evil Councel he Impriſoned the Perſons of the Religious, and put to ſhameful Death, Baniſhed, Impriſoned, and Diſinherited divers Noble and Conſiderable Perſons of the Kingdom.

5. For the Covetous deſire he had to profit himſelf, by Evil Councel he ſuffered Juſtice to be delayed and perverted contrary to his Oath at his Coronation, the which he was bound to keep and perform.

6. He put his Kingdom into Wars for the Deſtruction of his People to his Power, and by reaſon of his Cruelty and Incorrigeable diſpoſition, their is no hopes of amendment for his People, *Et ideo cunctí cenſuerunt Regem indignum Diadimate, & ideo deponendum.*

Richard the Second before elected *in vita patris & homage* ſworn, and after deſigned by the laſt will of his Father, and admitted Sp 707. 151.

mitted to the Crown by the Conſent and ſuffrage of the People, after 21. Years of Various and Unconſtant Reign, ſometimes gratifying the People in commanding the obſervation of their Laws, and outed Evil and Wicked Miniſters of State, otherwhiles acted by the Ill Impreſſions were made upon him by pernicious Councels, ſuffering his People to be diſturb'd and aggrieved, under all the ill practices and deſigns of a Corrupt and Licentious Adminiſtration, was at laſt conſenting to reſign his Kingdom, the which he did in the following form, his depoſition was conſented too and Confirmed by Parliament: And *Henry* Duke of *Lancaſter* elected, and by the ſame Power declared King the beſt Argument for his title, and the greateſt inducements probably to the Peoples choice, in this or former Preſidents was the ſecurity of Property and Freedom, which only has its being and preſervation in the continuance of the Monarchy.

Ret. Parl. 1. H. 4. n. 20. *Richard* the Second having in purſuance of his promiſe, reſolved to exhonerate himſelf of the Burthen of his Government, *in ſana libertate exiſtens promiſit domino Thomæ Archiepiſcopo Cantuarienſi, ſe velle Cedere & renuntiare Coronæ Angliæ & Franciæ, & ſuæ Regiæ Majeſtate, ex cauſis per ipſum Regem ibidem pro ſua inhabilitate, & inſufficientia confeſſatis, & hoc meliori modo & forma quibus facere poterat, prout* &c. *Dictus rex accerſitis ad eum omnibus ibidem preſentibus hilari vultu dixit publice coram illis quod paratus erat ad renuntiationem faciendam, & ad renun-*

renunciandum & ſedandum, ſecundum promiſſionem per eum ut premittitur factum, & ſedulum ſequentem diſtincte perlegit & ſubſcripſit manu ſua propria. *In nomine Domini ego* Richardus *Dei gratia* &c. *legios homines meos quoſcunq; Eccleſiaſticos vel ſeculares quocunq; nomine cenſeantur, cujuſcunque dignitatis, gradus ſtatus vel conditionis exiſtunt ajuramento fidelitatis, & homagii, & aliis quibuſcunq; mihi factis, omniaq; vincula legeantie, & Regale, ac dominii quibus obligati mihi fuerint, vel ſint, vel alias quomodo libet aſtricti, abſolvo, & eos & heredes ipſorum, & ſucceſſores in perpetuum ab eiſdem obligationibus & juramentis, & aliis quibuſcunq; libero relaxo ac quieto, & liberos ſolutos & quietos, & immunes quatenus ad perſonam meam attinet, dimitto, ad effectum omnem juris qui ex premiſſis ſequi poterit, ſeu aliquo premiſſorum, omniq; regiæ dignitati & majeſtati & Coronæ nec non dominio & poteſtati dictorum regnorum, & dominii, aliiſq; dominiis & poſſeſſionibus meis ſeu mihi quomodo libet pertinentibus, ſeu competentibus quibuſcunque quocunque nomine cenſeantur, infra regna & dominia predicta vel aliter ubi libet conſtitutis omniq; juri & colori juris ac titulo poſſeſſi ni & dominio, que nnquam habui, habeo ſeu quovis modo habere potero in eiſdem ſeu eorum aliquo, vel adeacum ſuis juribus & pertinentiis Univerſis ſeu dependentibus qualitercunq; ab eiſdem vel eorum aliquo nec non regimini & gubernationi in dictorum regnorum & dominiorum hujuſmodi & eorum adminiſtrationi, omnibusq; & omnimodis mero & mixto Imperio, ac juriſdictioni in eiſdem Regnis & dominiis, mihi competentibus*

vel competituris, nominiq; & honori & Celſitudini Regie, pure, ſponte, ſimpliciter, & abſolute melioribus modo via & forma quibus potero in his ſcriptis, renuntio & in totum reſigno, acre ac verbo dimitto, & eiſdem cedo & ab eiſdem recedo in perpetuum ſalvis ſucceſſoribus meis regibus Angliæ in regnis & dominiis & cæteris omnibus promiſſis in perpetuum, juribus in eiſdem ſeu eorum aliquo competentibus vel competituris quibuſcunque, meq; ad regimen & gubernationem dictorum, regnorum & dominiorum cum ſuis pertinentiis univerſis fateor. recognoſco, reputo & veraciter ex certa ſcientia judico, fuiſſe & eſſe inſufficientem penitus & innutilem, ac propter mea demerita notoria, non immerito deponendam & juro ad hæc Sancta Dei Evangelia, per me corporaliter tacta quod nunquam premiſſis, reſignationi, renunciationi, dimiſſioni, & ceſſioni contraveniam ſeu quomodo libet Impugnabo facto vel verbo per me vel per alium, vel per alios ſeu contraveniri vel impugnari permittam, quantum in me eſt publice vel occulte ſed eaſdem renunciationem, reſignationem dimiſſionem & ceſſionem in perpetuum ratas & gratas habebo & firmiter tenebo & obſervabo in toto & omni ſui parte, ſicut Deus me adjuvet & hæc ſancta Dei Evangelia. Afterwards he deliver'd his Signet Ring to *Henry* Duke of *Lancaſter* with this aſſurance that if it was in his power the ſaid Duke ſhould ſucceed him in the Government.

The ſaid Duke being elected by the People, that he might not be ſuppoſed to be altogether without pretence of title, he adventured to vindicate and aſſert his right

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in this form *viz.* In the name of the Father Son and Holy Ghoſt, I *Henry* of *Lancaſter* challenge this Realm of *England* and the Crown, withal the Members and appurtenances for that I am deſcended by right line of the Blood, coming from the good Lord King *Henry* the 3d. and through that right that God of his Grace hath ſent me, with the help of my Kinn and of my Friends, to recover it, the which Realm was on point to be undone for default of Governance, and the undoing of the good Laws, *poſt quam quidem vindicationem & clamium tam domini ſpirituales* &c. *& ouſnes ſtatus ibidem preſentes ſingillatim & communiter interrogati quid de illa vindicatione & clamo ſentiebant, iidem ſtatus cum toto populo abſq; quocunq; difficultate vel mora ut dux prefatus ſuper eos regnaret conſenſerunt.*

He then calling a Parliament with more than the accuſtomed expedition, inſerted this following clauſe into their ſummons leaſt he might be ſuſpected at his entrance to have incroach'd upon their priviledges. *Quantum autem ad abbreviationem, aſſignationis diei Parliamenti predicti, fuerat pro parte regis proteſtatio talis facta*, viz. *quod non erat intentionis ſuæ, ut ſtatibus regni ſui prejudicium offeretur, exinde nec quod hoc tractetur de cetero in exemplum, quinimmo quod abbreviatio illa fiebat tantummodo pro commodo & utilitate regni ſui & ſpecialiter, ut quorumcunq; legeorum ſuorum parcatur laboribus, & expenſis quodq; ſuper Gravaminibus populi celere poſſit remedium adhiberi.*

Willielmus Thirning *dominus formam ſen-*

tentiæ depositionis Richardi *notificavit, ac plenius declaravit, & statum homagium & fidelitatem eidem* Richardo *nuper Regi, ut premittitur factum resignavit & reddidit.* His Deposition was in this form following.

Nos proceres regni spirituales & temporales & ejusdem Regni commitates omnes status ejusdem regni representantes, commissarii ad infra scripta specialiter deputati, pro tribunali sedentes, itteratis perjuriis multiplicibus, crudelitate, aliisq; quam pluribus criminibus, dicti Richardi *circa regimen suum in dictis regnis, ac dominio supradictis, pro tempore sui regiminis commissis & perpetratis, ac eorum dictis statibus palam & publice propositis exhibitis & recitatis, que adeo fuerant & sunt publica notoria & manifesta & famosa quod nulla poterant nec possunt tergiversatione celari, nec non confessione predicti* Richardi, *recognoscentis & reputantis & veraciter ex certa scientia sua judicantis, se fuisse & esse insufficientem penitus & mutilem ad legimen & gubernationem regnorum & dominii predictorum & pertinentium eorundem ac propter sua demerita notoria non immerito deponendum, per ipsum* Richardum *prius emissa ac de voluntate & mandato suis eorum dictis statibus publicata eisq; exposita & notificata in vulgari, prehabito super his & omnibus in isto negotio recitatis, eorum statibus antedictis, & nobis in deliberatione diligenti vice nomine & authoritate nobis in hoc parte commissa, ipsum* Richardum *ex abundanti; & ad cautelam, ad regimen & gubernationem dictorum regnorum dominii juriumq; & pertinentium eorundem, fuisse & esse inutilem & inhabilem, insufficien-*

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tem pennitus & indignum, ac propter premissa ut eorum pretextu, ab omni dignitate & honore regijs si quid dignitatis & honoris hujusmodi in eo remanserint, merito deponendum pronuntiamus decernimus & declaramus, & ipsum simili Cautela deponimus, per nostram definitivam sententiam in his scriptis, omnibus & ceteris hominibus dictorum regnorum, & dominii & aliorum locorum, ad dicta regna ac dominium spectantium, subditis & ligeis suis quibuscunque inhibentes expresse, ne quisquam ipsorum de Catero prefato Richardo tanquam regi vel domino, regnorum aut dominii predictorum paret quomodo libet uel intendat. And affixt these following, being part of these articles exhibited and alledged to justify their consent, to admit his resignation, and foregoing deposition.

1. That he had wasted the Goods and Revennues of the Crown by profuse and extravagant gifts, and alienations, to persons, nor worthy, nor well deserving; and brought himself into a necessitous Condition, whereby he became burthensome to his People.

2. That his Judges were through Terror enforced, to deliver their opinions privatly in order to the Gratifying, and serving his arbitrary purposes Contrary to Law, and the Dictates of a free Conscience.

3. That he had Incurd the manifest sin of perjury, by leveying force against his People, Contrary to their freedom, merit and expectation, and committed other outrages in that Unnatural War by his Officers and Army.

4. That Contrary to his charters of pardon, he put ſome of his Nobility to death, diveſted others of their Eſtates, exacted fines and amercements, *de novo*, or otherwiſe denied the benefit and allowance of the ſame.

5. That he had veſted ſome Perſons with a Parliamentary Power in diſtruction of the priviledg of Parliaments, and Cauſed the Parliament Rolls to be raſed and altered to ſerve his purpoſes.

6. That againſt the Laws and Uſage of the Nation, he denied the *Duke* of *Lancaſter* Juſtice, upon his bill of impeachment againſt the *Duke* of *Norfolk*.

7. That without Cauſe and againſt Law and his Oath, he baniſhed the *Duke* of *Lancaſter* for Ten years.

8. That Contrary to the Laws and his Oath, he made vndue, and arbitrary Election of Sheriffs, to ſerve in that Office for the Nation, of ſuch as were Corrupted to ſerve his ends.

9. That he forfeited his publick faith to the Nation in the non-payment of moneys, He had borrowed, in the violation of his promiſe and accord.

10. That though he might out of his peculiar Revenues ſupport the ordinary expences of the Crown, yet by large Donatives and Profuſion, he not only conſumed and waſted thoſe, but involved himſelf in debts; though moreover he had extorted greater ſupplyes of money than any of all his predeceſſors.

11. That he made his Will his Law, that he

he Clamed the ſole and abſolute Power to make, alter, or abrogate Laws, and according to his arbitrary pleaſure, he diſtributed Juſtice to the People.

12. That he unduly procured an Act of Parliament to enable him, *ut poſſet adeo eſſe liber, ſicut aliquis progenitorum ſuorum exſtitit ante illum*, by Color whereof, he aggrieved his People, contravening ſeveral Acts of Parliament that were in force, and unrepeald.

13. That he continued the Sheriffs in their Offices, to Gratify his own deſign ſome Two, Three or Four years, contrary to, and againſt the expreſs words of the Statute.

14. That though the Elections of Members to Parliament, ought to be free and unprelimitted; yet he Cauſed Sheriffs to return, perſons of his own particular nomination only, and which he was able by bribes, threats, or flattery, to encline and diſpoſe, to a complyance with his extravagant and avaritious purpoſes, (and more particularly for the Tax on Wool,) whereas they ought to have freedom to propoſe their Greivances, and to provide fit remedies to them in all occaſions by their own voluntary Actings.

15. That he impoſed an Oath upon the Sheriffs that they ſhould obey all his Commands, under the Great or Privy Seal, and that he, his Deputies and Subſtitutes, ſhould Impriſon all, or any perſons that ſhould by private or publick Conference, call ſuch his Actings into diſpute or cenſure, untill his farther

farther pleasure Contrary to *Magna Charta* and his Oath.

16. That his Counsellors and Justices were so frequently overaw'd and discouraged, that they durst not advise, what in a good conscience they knew was necessary for the good Estate of the Kingdom.

17. That he Carried forth of the kingdom the *Regalia Corona*, the last and surest trust of the Crown, with out Consent of Parliament, and Raced and Conceld the Rolls and Records that Concern'd the Government out of an Evill purpose and intent.

18. That he was variable and inconstant in his Actions. so mutable and inconstant to his Oaths and promises, both at home and abroad, that he was Censured by all the World a perfidious person to his own Infamy, and the Nations Detriment and Scandal.

19. That he Challenged an absolute Jurisdiction and Property, over the Lives, Estates and Libertys of his People, Contrary to all Law and Custom.

20. That Contrary to *Magna Charta*, he Commanded Martial Law to be executed in Civil matters and would have Clames defended, by battle, in unusual and unequal Cases, by persons unsutable in Age or Power.

21, That he imposed Unusual and Alegal Oaths, which he exactted the performance of under panaltys, and made the People enter into obligation to observe the same,

ſame againſt all Liberty; Right and Juſtice.

22. That he Endevored to Enſlave the Nation after his death, by obliging the Succeſſor, or in his default, Legatees by his laſt Will deputed, to whom he bequethed moſt part of his Eſtate, that they ſhould enforce the Execution of ſeveral Acts of Parliament, unduly and by force obtained againſt the Known Laws and Libertys of the People.

23. That he forejudg'd the *Duke* of *Lancaſter*, and forbid any Man to petition or Interceed for him, againſt Juſtice, Mercy and his Oath at Coronation.

24. That he leveyed an uncuſtomed force, in an unuſual manner, which committed much violence and outrage upon his people, without being prevailed upon by the Petitions and Remonſtrances of the Kingdom for redreſs; and by that means gave the Nation a juſt cauſe of Uproar and Commotion.

The beſt pollicy that Kings can uſe to perpetuate their Thrones to them and their poſterity, is to govern their Subjects ſo as may win their Hearts and Affections, and not to exerciſe Prerogative beyond the bounds of Law; this being a moſt certain experienced Rule, which *Ariſtotle* gives. There are two inteſtine Cauſes moſt perilous, and frequent of all others, by which a King is loſt uſually and ſubverted. Firſt, if the Nobles and People diſſent from the King himſelf. Secondly, if Kings will Raign Tyrannically, and Uſurp a greater Domination or Prerogative, than the Laws of their Kingdoms

give

give them. But assuredly a Kingdom is preserved by contrary remedies, especially by a moderate, kind and temperate form of Government, for by how much the more moderate the King shall be, and contented with smaller and fewer Prerogatives, by so much the more lasting shall his Kingdom necessarily be; for by this means it receeds further from the Domination of a Tyrant, and comes nearer to the equality of Mankind, and humanity of Life, and is less envied of his Subjects, &c. *Rex dicitur à bene regendo, non à regnando, Tyrannus dum populum sibi creditur, violenta opprimit dominatione: securitas securitate mutua paciscenda est, errat enim siquis existimat tutum esse regem, ubi nihil à rege tutum est, unum est enim inexpugnabile munimentum, amor civium.*

We need not wonder if the sum of their grievances rise so high, and the account grew so immence, the methods were precluded, and the intercourse disappointed that should have begot a better understanding betwixt King and People, the Source of all the injuries, both particular and general, arise from this one Cause mentioned in the two last Articles; the King was alienated and perverted from giving entertainment to the Petitions of his People. Petition is all the remedy a Subject hath against the King, when he Acts (or any by his authority) beyond the order of his Laws. 'Tis called the Subjects Petition of Right, because of the Right the Subject hath against the King, by this way of address, by order of his Laws both in and out of Parliament. 'Tis a Liberty

Stamford, Petition, Cap. 22.

berty belonging, and due unto the Subject, both by his *Magna Charta*, and assured by Oath at Coronation; 'tis attested by Act of Parliament, that the King is by Oath and Conscience to hear and remedy grievances by Law, upon the complaint of his People. *Mag. Ch. C. 29. Oath Cor. 20. Ed. 3. 25. Ed. 3. Part. 6. Proc. 12. Fac.*

It is the only suitable and respectful application from all states and conditions of persons in subordination; and gives the highest approbation and allowance to Prerogative imaginable, whether we respect the person *à quo*, or the other *ad quem* it is directed.

1. In the express or implyed acknowledgment of his Power, to whom they so address, who is allowed can, and of his goodness and clemency will; answer their humble supplications.

2. In the Confession of his Piety and Justice (the two chief and infallible supporters of the Throne) from whose alone Divine and Impartial distribution they acknowledge themselves secure from violence and wrong.

3. In the magnifying and confessing his interested care, to whom alone, as *Pater patriæ*, and *Conservator populi* they appeal, and modestly mind him of his Covenants and their hopes.

4. In the manifestation of their own insufficiency and impotency, by their resignation and acquiescence in his Soveraign Power for remedy.

5. In the conserving and maintaining such a reciprocal intelligence, that by this way of dutiful Communication, they are Sentinels and

and Spies on all occaſions, having obſerved to preſent the dangers of the Nation, and again to receive in anſwer, ſuch diſpatches as may inable them to be ready to ſerve the Government in all emergencies.

6. In the prevention of all ſurpriſe upon the King, by partial and ſelf-intereſted men, that may for private reſpects and deſigns, really influence the Monarch to a general prejudice.

7. Becauſe by this humble way of preſenting themſelves by ſupplication unto their King, they act ſuitable to all the commands given and allowed by Divine and humane powers.

If the publick benefit and conveniency will not incline, yet I wiſh the puniſhments inflicted on the Gain-ſayers, and Oppoſers of this mutual, reciprocal, beneficial and good underſtanding between the King and People, may deter all perſons from diſcountenancing ſuch neceſſary and dutiful correſpondence. The Articles againſt the Spencers, *inter alia*, were, for that they would not ſuffer the Kings Grandees, nor good Counſellours to come near unto the King, and to adviſe him. 2. For giving evil Counſel that the King ſhould not anſwer the Petitions of his Grandees and others, but according to their pleaſures. 3. For putting out good, and putting in ill Miniſters of State in their places, as Sheriffs, Juſtices, *&c.* for adviſing to raiſe force againſt the Tenor of *Magna Charta*.

Extra

Extra Parliamentum nulla petitio eſt grata licet neceſſaria in Parliamento nulla petitio eſt ingrata ſi neceſſaria. Cook 4. Inſt. 11.

Amongſt the many Articles againſt the out great Cardinal *Woolſey*, this was not inconſiderable, that he hindred the Kings Liedges to ſue to him by petition directly and indirectly, Herb. Hiſt. H. 8. Fo. 237 art. 37.

The miſerable Conſequences that Enſued the denial of the petition of the Peares againſt *Gaueſton* are legible in a moſt Deplorable Inſtance. Speed 655.

But leaſt ſome too zealous in Defence, of the wickedneſs of the Late Rebellion ſhould, from the two laſt preſidents, pretend a Vindication of the Horrid Treaſon perpetrated by the late Rump or Juncto, for Parliament in no manner of acceptation were they at that time; on the ſacred perſon of the late King let them take the following reaſons by way of antidote: and note the difference.

1. Becauſe in the Parliament immediatly ſucceeding the depoſition of King *Richard* the Commons did diſclame in all Right belonging unto them, and did confeſs that the judicature and judgments of Parliament belonged to the King and Lords. 1 H. 4. n. 49.

2. Becauſe the Commons are no Judges of the Nobillity, neither in nor out of Parliament much leſs of the Majeſty of *England*, Prince *Edward* in anno 1260. as only Heir apparent to the Crown, appeald from the Judgment of Lords as not his Peers. But the like priviledg was not Allowed or pretended by Earl *Iohn* (afterwards King)

(who

who was sentenc'd by the Lords *demeruiße Regnum* for attempting something in prejudice of his Brother *Richard* the first: nor yet to their Uncles: *Gloster*, *Richard* the 2*d.* and *Sommerset*, *Edward* the 6*th.*

3. Our Law Books Generally insolve, the King hath no Peeres in his own Realm, *Brartou. lib: Cap*: 8. *Fleta. lib:* 1. *Cap.* 5. *Stamso: lib:* 3. *Cap.* 1: *F.* 15. 3.

Spelm. Com. Tom. 1. 411. 29. *Ed.* 1.

4. *Rex non poteris secundum legem in lite stare, Coram judice suo, agendo, vel respondendo per Dignitatem naturalem.* The Kings of *England*, *ex preheminantia status suæ Regiæ dignitatis*, *non debent respondere*, *Coram aliquo judice*, *super juribus suis in regno.*

5. Because multitude of Statutes dictate the King to be only supream head, both of the Church and Realm of *England*, both of which, recognise no superior under God, but the King only.

6. Though Articles were drawn and exhibited they were rather to Testify why they accepted their resignations, then any ways offered as a Charg to which they were to answer, as it were on Tryal, in order to Execution.

In Parl 1325. *Ed.* 2

7. Even after Deprivation or Resignation, they acknowledged some remaines of Royalty in them, as may appear by their surrendring up their homage, and by the punishment of *Mortimer* in Treason, for the death of *Edward* the 2d,

8. Their deposition was authorised by the Legislative Power in its fullest acceptation (not by the judiciall) Consented to by both Houses, and ratifyed by the Kings Fiat and Assent.

6. Both

9. Both Lords and Commons unanimously agreed in the resigning of their homage and acceptance of the Cession.

10. Neither of these Kings had any violence offered to their persons by both, or either Houses of Parliament, nor were by any Instrument endeavored to be Deposed or Deprived of their Royalty and Power. until they had from their own allowance and Consent, Divested themselves of their Authority, Published their inability and waved the Government.

Henry the 4*th*. pretended more than a Good many Titles, the resignation of his predecessor, an obscure Title by discent, those he whispered at home, but to all Forreign States he insisted on his Clame by protestation, to be by the united Consent and Election of the Parliament or people in his own only person, and in this form in Parliament expresses it, as Coming from the Blood Royall from King Henry. And through the right that God of his grace hath sent me with the help of my Kinn and of my Freinds to regain the same which was in point to be undon for want of good Government and Due Justice, and after by Parliament intailed the Crown upon his issue Male. *Speed* 746. 7 *H.* 4. 2.

Henry the 5*th*, could not pretend a fuller larger right and title then what was gotten by the possession of his Father, and the consent of Parliament by which he swayed the Scepter during the two short Continuance of his victorious and renowned Reign, Dying he will'd the Crown unto his brother, His Son (after Henry the 6*th*.) *Speed* 807.

being then a tender Infant. But that Donation by General diſſike was diſapproved. And
Obſerv. the Conſequence of ſuch a preſident apprehended dangerous, which would have brought the Title to the Crown to have been little better than Adoptive, a thing utterly diſallowed being againſt the known and certaine Rule of inheritance and diſcent, or the Popular Election, yet ſuch
Obſerv. is the fate of Kings that theſe Titles of the laſt three, that were ſo fairly eſtabliſhed and aſſured to them by Parliament, at the entry of the next Monarch were all Cal'd in queſtion, and by the ſame authority declared to be void, and by in-
1 Ed. 4. c. 9, 10. &c. truſion for which they and the Heirs of their Bodys are utterly diſinabled, as unworthy to enjoy any inheritance Eſtate or Profit, within the Realm of *England* or Dominions of the ſame for ever.

Walſing Hiſt. Angl. p. 459. *Speed* 733. *Speed* 575 *Daniel* 185 9 Ed. 4 c. 2 1 Ed. 4 c. 1

The Parliament ſummoned by King *Henry* the 5*th*. met after his Death for the eſtabliſhing *Henry* the 6*th*. his Succeſſor, and making other needful proviſions for the Nations welfare, Parliaments have not always been Diſſolved by the Death or Depoſition of former Kings, but that their Actings have been eſteemed valid, as may appear in King *John*, *Ed.* 1. *Ed.* 2. *Rich.* 2. *H.* 6. *Ed.* 4. And thoſe perſons elected and admitted to the Government by their Vote and Suffrage, have rarely been adjudged to come in by Illegal Uſurpation. *Henry* 4. 5. and 6*th*. were declared indeed, though not of right Kings of *England* Succeſſively. Becauſe the Laws and other judicial Acts in the Courts of Juſtice, are the

Acts

Acts of the Parliaments, and Courts themſelves which do continue, not of the Uſurping Kings that made them.

Edward the *4th.* aſſumed the Royal power not without the beſt of Titles to wit by right of inheritance and Act of Parliament. In purſuance of an agreement betwixt *Henry* the *6th* then King; *Richard* Duke of *York* his father and himſelf having alſo the Election of the Nobility and Conſent of the Commons in the Field which got him the poſſeſſion, which he was forc'd once again to quit, overpowered in forces by the then potent Earl of *Warwick*, who aſſured by intail the Crown unto the Heirs of the Duke of *Clarence*, But after the Death of *Henry* the *6th.* (who had played *Rex* a ſecond time in that Interval for only Six months) by the favor of the People and the aſſent of Parliament, he was reveſted in the Throne. And the tranſaction againſt *Richard* the *2d.* made in the 1. of *Henry* the *4th.* were after in the firſt of *Edward* the *4th.* repeald. The acts of one being always adjudged to be in force until annulled or repeald by a ſubſequent Parliament, and the ſame Parliament knowing certainly and without doubt or ambiguity, the Right and Title of *Edward* the *4th.* to be by Gods Law, Mans Law, the Law of Nature, ought to be their Lord and King and that he was ſo from his Fathers Death, therefore beſeech him, that by the authority aforeſaid, his Right and Title to the Crown before ſpecified, be declared, taken, and accepted, and reputed true and right wiſe, and the ſame Right

Rot. Parl. 1 Ed. 4. n. 8.

and Title to abide and remain upon record perpetually, by the said advice, Assent and Authority.

Exact. Ovid. pag. 665, 666, 667.

Farther the said Record reciteth that the Clame of *Richard* Duke of *York* (father to King *Edward* the 4*th.*) For the Imperial Crown against King Henry the 6*th.* after he had Reigned 28 years was by both partys submitted by appeal unto the disposition of the Parliament, (the Lords being ordered to deliver their opinions on that debate freely without hazard or danger of Impeachment) who determined and decreed the Right was in the *Duke*, yet Continued the Crown unto the King during his life, on Condition of good Abearance towards the *Duke*, and in Case of death or breach of accord the *Duke* was to possess it: King *Henry* after violating the agreement, and procuring the Death of the said *Duke*, It was by the Parliament Enacted that King *Henry* against good faith, troth, Conscience and his honor brake the said Convention and departed there from, so that the said *Edward* was at his liberty to Use the said Title after the Death of his said father. Be it therefore Declared by the advice and assent of the said authority, that the said agreement, Concord and Act in all things which have been in any wise repugnant, to the Right of the said King *Edward* unto the Crown Royal, be voy'd and of none effect. And King *Henry* the 6*th.* (His Queen) were attainted thereupon for High Treason, Imprisoned, Deposed, and he at last murthered

red by the procurement of *Edward* the *4th.* to secure the Crown to him and his posterity.

Tis not to the weakness or instability, of that assembly that we Impute the variations and alterations of their Councels, we may rather admire their prevoyance and wisdom, that is sufficient to stear, in such vicissitudes. Being wise enough to side with power, and therefore like the times, to fits of distemper and alteration at the Coming in of Every tide, did build, pull down, enact, and disenact, turn and return the *English* Crown, from *York* to *Lancaster*, and back again, nor can they justly be herein Censured, for Councels of Men are not Ordain'd to hinder Divine providence or overrule fate, but to foresee and close with occasions in the most advantageous way for publick good, and when both windes and Current are uncertain to ride at float, till they can discern the most commodious Haven to Winter In. Observ.

No sooner had *Edward* th *4th.* pay'd his debt to Nature, but his unnatural brother *Richard* Duke of *Glocester* (who murthered *Henry* the *6th.* with his own hand) procured himself to be made protector of his Nephew the young King *Edward* the *5th.* (who only lived long enough to be inrolled in the Catalogue of the Monarchs) who together with his brother, got into his Custody by perjury, treachery and dissimulation he Barbarously assassinated, to make away to his Clame and then to the possession of the Throne, which was speciously *Speed 912. Baker in R. 3. Exact. Col. 709.710. Rat. Parl. 1 M. R. 3.*

enough pretended before his Parliament, as the undoubted heir and inheritor of the Crown, by diſcent grounded on the Laws of God and Nature, and the ancient Laws and Laudable Cuſtomes of the Realm, and for farther Caution as his ſureſt Clame added the Title of lawful Election. By the Eſtates in Parliament, who declared him their lawful King by ſucceſſion and election, and by the ſame power Entayled the Crown upon the Iſſue of his Body and declared his Sonn Prince *Edward* heir apparent, by which power *George* Duke of *Clarence* was diſabled to Clame or inherit the Royal Scepter.

Speed 913.

Obſerv. Thus were theſe broken Titles ſawdered, and endeavored only to be ſupported by the act of Parliament, and thus from the natural propenſity of the People, the genious of the Nation and the Neceſſity to Countenance and ſupport their Eſtabliſhed Laws, they did ſubmit to and ſupport the Monarchy. And even the leaſt pretences of a Right were either allowed or made ſufficient.

From the former and the next enſuing preſident one would almoſt conclude with the ſaying of *Phillip* the *Hardy*, that Kingdoms only belong to them that can get them: Though the next poſſeſſor *Henry* the *7th.* had the acknowledgment of a ſix fold Title from the Pope, viz. of Inheritance of War, of eſpowſalls of Election, of gift by Parliament, of pontifical benediction, yet 'tis poſſible that of Election and Parliament carried the ſtrongeſt Evidence. His Title follows.

John

John of *Gant* Duke of *Lancaſter* had by *Katherin Swinford* before Marriage four Illegitimate Children. *Henry*, *John Beanfort* (after Duke of *Sommerſet*) *Thomas and Joan*, in the 20*th*. of *Richard* the ſecond, he by Act of Parliament makes them Legitimate in the form following. *Rex & Chariſſimus conſanguineis noſtris Nobilibus viris*, Johanni *militi*, Henrico Clerico Thomæ *domicello ac dilecte nobis nobile* Johanne Beaufort *domicelle*, Germanis *præclariſſimi Avunculi noſtri*, Johannis Ducis Lancaſtre *natis*, *ligeis noſtris ſalutem, nos dicti avunculi noſtri genitoris veſtri, precibus inclinati, vobiscum qui vt aſſeritur defectum natalium patiamini vt hujuſmodi defectum* (*quem ejuſque qualitates quaſcunque præſentibus habere volumus pro ſufficienter expreſſis*) *non obſtante, ad quaſcunque honoris, dignitatis*, (*excepta dignitate regali, pra eminentias*, *ſtatus gradus & officia publica & privata tam perpetua quam temporalia, atque ſudalia & nobilia. Quibuscunque nominibus nuncupantur, etiamſi ducatus principatus comitatus. Baroniæ vel aliæ feuda fuerint etiamſi mediate vel immediate vel a nobis dependeant ſen teneantur, præfui, promoveri, eligi, aſſumi, & admitti illaque recipere retinere, perinde libere & licite valeatis, ac ſi de Ligitimo nati exiſteretis ; Quibuſcunque ſtatutis ſeu conſuetudinibus Regni noſtri* Angliæ *in contrarium additis ſen obſervatis* (*qua hic habemus pro taliter expreſſis*) *nequaquam obſtantibus ac plenitudine noſtra regatis poteſtatis ac de aſſenſu pertinenti noſtri tenere preſentium diſpenſamus, voſque ut veſtris quemlibet natalibus Reſtituimus & Ligitimamus. Henry* the 7*th*. was

Cod. 4. Inſt. 36, 37

was Son to *Edward Haddam* Earl of *Richmond* and *Margaret* his Wife, daughter and heir of the above mentioned, *John Beufort*
Obſerv. Duke of *Sommerſet*. Though he diſcended from this corrupted and reſtrained original, he clamed the Crown; and had it intayled upon him by act of Parliament, without Glancing at the Title by his eſpowſals with the Princeſs *Elizabeth*, Daughter and Heir
1 *Ed* 4 *c.* 1
9 *Ed* 4. *c.* 2 to King *Edward* the 4*th.* coming in by Election, being ſelcome, or never adjudged an illegal Uſurpation in any Parliament.

25. *H.* 8. 22. In the Reign of King *Henry* the 8*th.* the Parliament did not only Authoriſe the di-
B. 28. *H.* 8. vorces of that King, but did baſtardiſe, and Legitimate his Children by that ſame power, and did likewiſe, Impower and Inable him to diſpoſe of the Crown unto or from his Children, with and under what limitations and conditions pleaſed him; and enacted any of his Children aſſuming the Crown, otherwayes then by this Authority, to loſe their Right and be adjudged Traitors to the Realm; whence it came to paſs, that
35 *H.* 8. 1. King *Edward* the 6*th* Queen *Mary* and Queen
1 *M ſeſ.* 2 *C.* 1. *Elizabeth* did hold the Crown by Authority of Parliament. The act for baſtardiſing of Queen *Mary* was indeed repeald. But that againſt Queen *Elizabeth* was not, who clamed by ſettlement of her fathers will then to be enabled by 35. *H.* 8. And her Title being ſcrupled by the faction of the *Romiſh* party produced and occaſioned the ſtatute of
13. *Eliz.* the 13 of her Reign, which made it Treaſon, during the Queens life and loſs of goods after her Death for any man to deny the

Au-

Authority of Parliament to direct, limit, or restrain the Crown.

It was made no less then High Treason to affirm that the Queen, to and with the Authority of the Parliament of *England*, is not able to make Laws and Statutes of sufficient force and validity, to binde, limit, Restrain and Govern, all persons their Rights and Titles that in any wise, may or might clame any Interest or possibility in or to the Crown of *England*, in possession, remainder, inheritance, succession or otherwise howsoever. 13. *Eliz.* Cap. 1.

The Parliaments of King *Henry* the 8*th.* did not only nullify some of his Marriages and Ratify others, declaring some of his issues Legitimate and hereditable to the Crown, others not, and appoint the Queen if living to be protector, of the Infant King or Queen, that should Inherit the Crown or such of the Lords, as the King by his last Will should assign; likewise prescribed strict Oaths for every subject to take, to maintain the succession of the Crown, as it was limited by Parliament, which oaths for any to refuse, was made High Treason, or to write or speak any thing against the succession of the Crown, as was thereby limited, and withall Invested the King with an absolute Authority, by his Letters Patents under his seal, or his last Will in writing signed with his hand, for lack of Issue lawfully, begotten of his Body to give, limit, assign, appoint or dispose the Imperial Crown of the Realm, to what person or persons, and for such Estate in the same, and under such con-

conditions as ſhould pleaſe his Majeſty. The Parliament promiſing by one common conſent, to accept, Love, take dread and obey, as their legal Governors, and ſupream heads, ſuch perſon or perſons only, as the King by the Authority of theſe Acts ſhould give the Crown unto, and wholy to ſtick to them as true faithful ſubjects. Provided that if any of his Children or Heirs, afterward did uſurp, one upon the other in the Crown of this Realm or Clame or Challeng the ſaid Imperial Crown, otherwiſe or in any other Courts, form, degree, or condition, then the ſame ſhould be given, diſpoſed, and limited unto them by the King, by Vertue and Authority of Parliament. That all and ſingular offenders, in any of the premiſes Contrary to theſe Acts, and all their Abetters, Maintainers, Facters, Counſellors and Aiders therein ſhall be decreed and adjudged, High Traitors to the Realm, and that every ſuch offence ſhall be accepted, reputed and taken to be High Treaſon and the offenders therein, their aiders &c. for every ſuch offence ſhall ſuffer ſuch Judgment, pains of death, loſſes and forfeitures of Lands, Goods, and priviledges of ſanctuary, as in caſes of High Treaſon. And over that as well the Kings ſaid Heirs and Children, and Every ſuch perſon and perſons to whom the Crown ſhould be limited as aforeſaid and every of their Heirs, for every ſuch offence above ſpecified by them to be committed ſhall looſe and forfeit as well all ſuch Right, Title and Intereſt, that they may clame or challeng

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in or to the Crown of this Realm as Heirs by diſcent, or by Reaſon of any Gift or Act, done by the King for his or their advancement by Authority as aforeſaid or by any manner of meanes whatſoever. And the ſtatute that intailed the Crown upon Queen *Mary* after the death of *Edward* the 6th. hath this proviſo. That if the ſaid Lady *Mary* do not keep and perform ſuch conditions as King *Henry* by his Letters Patents or laſt Will in writing, ſhould declare and limit to her ſaid Eſtate in the Imperial Crown. That then and from henceforth the ſaid imperial Crown ſhall be and come to the Lady *Elizabeth*, and the Heirs of her Body lawfully begotten, in ſuch like manner and form, as though the ſaid Lady *Mary* were then dead without any Heirs of her body begotten, any thing in this Act to the contrary notwithſtanding. And the like proviſo there is for Queen *Elizabeth*, that if ſhe do not &c. it ſhall come to ſuch &c.

35. H. 8. C. 1.

Magna Charta, Charta de Foreſta. Stat. de Talagio non concedendo Art. ſup. Charc. confirmationes lib.

Let me here obſerve that the Parliament have not Augumented only but likewiſe have Abridged, Allayed, reſumed and aboliſhed, ſome part of the Kings Royal Power and Prerogative upon juſt cauſe, that is when it becomes onerous, miſchievous or dangerous to the ſubject, Inconvenient to or Inconſiſtent with the Kingdoms and Peoples peace, Welfare, Safety, Liberty or Laws.

1 Ed. 3. c. 6. 7
21. Jac. 24
1 R. 3. c. 2.
4 H. 4. c. 13
7 H 8. c. 3.
petition of right.
3 Car. cum multis aliis

Edward the 6th. (whoſe Title you may ſee before) was the Seventh Monarch that came in Infancy or minority to the Throne, (which can be ſaid only affects the perſon of the King) for the wiſdom of the Crown,

Obſerv. 1 Ed. 6. 11.

reſt.

resting in the Councels of many, who are Equally wise whether the King be young or old, (secures the Government from all appearance of insufficiency) Designed his successor by his Will, with the consent of his privy Councel (and with the allowance of some Protestant Bishops) to the disinherison of the Right pretenders formerly substituted by Authority of Parliament, But for want of such a Power to coroborate his Testament or Bequest, the persons pretending by the same, incur'd the punishment for High Treason.

King *James*'s in his speech, made at Guildhal occasion'd by the Insurrection of Sir *Thomas Wyat* expresses his Title in these words. That I am the Right and True Inheritor unto the *English* Crown. I not only take all Christendom to witness, but also your Acts of Parliament confirming the same.

Observ. From all these presidents 'tis manifest that it was the opinion that the Parliamentary Power was the best and safest expedient, to make their possessions and enjoyments Right and Lawful, which was farther Imployed, not only to compremise, all difference between competitors, to regulate and adjust all mistaks in Clame or Title, but even to Legitimate both things and persons, and ever in spite of what ever obstacle to sustain and conserve the Monarchy. The competitors or pretenders to the Crown, have often imbru'd their hands in Royal Gore. And made no scruple to assassinate one the other.

But

But the Parliament of *England* neither did or can, Act to the prejudice of the Monarchy, ſo that we may conclude with Mr. *Speed*. That the Statutes of his time teach the Court of Parliament is of ſuch Authority, and the People of this Land of ſuch Nature and Diſpoſition, as experience teacheth, that the Declaration or Manifeſtation of any Truth or Right by the three Eſtates aſſembled in Parliament, and by Authority thereof maketh before all things moſt faith and certainty to Mens mindes, and removing of all doubts *&c.* *Speed* 914.

It may yet appear that the Parliament both may and have given more Power and Prerogative to Kings, then they *in jure Coronæ* Enjoy of common Right, and to give it with ſuch limitations and qualifications as ſeemed good to them. *Stat. de Prerogative.* 1 *H.* 4. 8. 10.

The King by his Proclamation cannot alter the Law, but he may make a Proclamation, that if any man do contrary to the content of the Proclamation, he ſhall incur his Majeſtys diſpleaſure, but upon pain or forfeiture of Lands or Life he cannot do, yet the Parliament did ordain that Proclamation made by the King by the adviſe of ſuch of his Councels, as were named in an Act of Parliament, ought to be obſerved and obeyed as an Act of Parliament, and made another Act to puniſh the offenders againſt the former. And that Power was at laſt revoaked and theſe Statutes repeald by another, and whereas they had veſted that King with a Legiſlative Power for repealing and avoyding Acts of Parliament. They *Crompton Parl.* 14. 31 *H.* 8. *c.* 8. 34 *H.* 8. *c.* 25. 1 *Ed* 6. 12 28 *H.* 8. 17 1 *E.* 6. 4.

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reaſſumed, revoaked and annulled the ſame as being againſt the fundamental Eſtabliſhment of the Kingdom.

Before I conclude this Tranſcript, I ſhall only in few words Inſert ſome Minutes of what concern'd the Power clamed by the Clergy and See of *Rome*, And give a brief account of the Parliaments Actings in that concern beginning where we left to Treat of this affair.

The Pope and his Clergy as were mention'd before, aymed briskly at the Head and Throat of Monarchy, and being dangerous in their ambitious deſignes againſt the Crown, created jealouſy from the Monarch; who by the Aſſiſtance and Loyal ſuffrage of his people, ever hitherto happily oppoſed, and prevented the dreadful conſequences and ill affects of that uſurpation. But ſtill finding the Throne ever full of a King that would not give place nor remove, ſits down rudely in his lap. A heavy burthen no doubt unto the Kingdom, conſidering, his arrogant pretence to juriſdiction, his proviſions, penſions, exemptions, Impoſitions, and other oppreſſions. So that the Parliament were awakened to obviate and prevent theſe grievances, and by interpoſing of their Acts, Gradually, And by parts to put a reſtraint on their pretences, as to prohibit the forreign travels of our Coynes, to forbid proviſions and appeals *&c.* And Endeavored to beget in them a better underſtanding of their original. Which was declared to be neither *jus divinum* nor *Romanum*, but that their Lordſhips Power and great

24 *H.* 8. 12
4 *Ed.* 3. 6.
25 *Ed.* 3. 5 and 22.
25 *Ed.* 3. 6. &c.

Great poſſeſſions was given by the King and others of his Realm. And 'tis moſt certain the Gleanings of the Crown of *England* were more pretious than the Vintage of the Triple Crown. Theſe liberal endowments and Immunitys might have (to a reaſonable thinking) wedded and united the *Engliſh* Clergy to the *Engliſh* Scepter, but it was ambitious Coy, and Covetous, and the affinity between the Pope and Clergy, was ſo inſeperate they lived in one the other, and at laſt were only ſeperated by cutting the Linck aſſunder. Yet before that happy blow, there Government was as grateful and obliging as that over the *Brittains* mention'd by *Gildas* and ſpoken of before, for the People complain'd in Parliament that the Kingdom had been now too long Governed, by the Clergy to the diſinheriſon of the Crown, and therefore prayed that the great offices of the Kingdom might be executed by the Laity. 37 *H.* 8. cap. 17. 25 *Ed.* 3. *Rot. Parl.* 22. *n.* 15.

The original Power in ordering Church affairs reſted in the Parliament, which they at length reaſſumed, not by way of uſurpation, but reſeiſure, for their poſſeſſion was moſt antient, for the Popes pretended Title by preſcription was unjuſt and by intruſion and was ever under a continual clame and ſo the Right was ſaved, which the Parliamenr by the Law of their Power have Veſted and Eſtabliſhed in the King; ſo conclude theſe men pretending in patronage both from Right drawn from Heaven and derived from Men fail in their evidence, unleſs the people do ſtill believe more than 25 *H* 8. 19 32 *H.* 8. 6.

they

they are able to understand: So that I may now at last close with this Assertion, that the Legislative power, yet continues (and so may it ever) in the three estates of King, Lords, and Commons, *quod erat probandum.*

Reader, I have been the more tedious in my Transcript to convince thee.

Observ. & Monit. Br. Car. 1. " 1. That the administration of justice, " by the settled Laws in the *Brittanick* King- " dom, are the most excellent Rules the " King can Govern by, which by an ad- " mirable temperament, give very much " to subjects, industry, liberty and happi- " ness, and yet reserve enough to the Ma- " jesty and Prerogative of any King, who " owns his People as subjects not as slaves, " whose subjection as it preserves their pro- " perty, peace and safety, so it will ne- " ver diminish his Rights, nor their Ingeni- " ous Libertys, which consists in the enjoy- " ment of the fruits of their Industry; and " the benefit of these Laws to which them- " selves have consented.

Observ. & Monit. Br. Car. 1. " 2. That the Parliament is the most " considerable, safe and only support and " maintenance of the Imperial Crown, " Kings of *England* should call their Par- " liaments, not more by others advise, and " the necessity of their Affairs, then by " their own Choice and Inclination; for the " Right way of Parliament is most safe for " the Crown and Best pleasing to the peo- " ple. The end of calling a Parliament be- " ing to use their advise that sit, the King " ought to have Charity enough to think

" there

" there are Wise men enough amongst them,
" humility enough to think it fit, he should
" in some things hearken to them, whose
" Councel he may want.

" 3. That it is the Nations strength
" and security, against forraign Incroach-
" ment and Invasion.

" 4. That the Parliament by Law or
" Color cannot be supposed in a possibility
" to design a change, or alter the Govern-
" ment from a single person. A Loyal Par-
" liament Concurrent with the King it may
" be hoped will so farr prevail, over the
" Hearts and understandings of the whole
" Kingdom (who must look upon the Mem-
" bers as naturally and Originally trusted
" by and for them) that it will be above
" the Reach and Malice of those who some-
" times have too great an Influence upon
" the people to discredit the Kings most In-
" tire Actions, and Sincere promises, the
" Members being the best witnesses for the
" one, and security for the other. I would
" not have you entertain any aversion, or
" dislike to Parliaments, which in their
" right constitution, with freedom and ho-
" nor, will never Injure or Diminish your
" greatness, but will rather be as inter-
" changings of Love, Loyalty and Confi-
" dence betwixt a Prince and his people,
" nor would the events of this black Par-
" liament, have been other than such (how-
" ever much biassed by factious in elections)
" if it had been preserved from the insolencys
" of popular dictates, and tumultuary im-
" pressions. The sad effects of which, will

Observ & Monit. Br. Car. 1.

Εἰκὼν Βασιλ. lib 1.

" no doubt make all Parliaments after this
" more Cautious, to preſerve that freedom
" and honor, which belongs to ſuch aſſem-
" blies (ſince the publick Intereſt conſiſts
" in the Mutual and Common good both
" of Prince and people) nothing can be
" more happy for all, than in fair, grave
" and honorable ways to contribute their
" Councels in common, Enacting all things
" by publick conſent, without Tyranny or
" Tumult. We muſt not ſtarve our ſelves
" becauſe ſome Men have ſurfeited on whol-
" ſome food.

Obſerv. & Monit. Br. Car. I.

" 5. That a free lawful and unprelimi-
" ted Parliament can only ſafe-guard and
" preſerve the people, in the Enjoyment of
" their Religion, Lives, Liberties and Eſtates,
" againſt the Cruelty, avarice and ambiti-
" on or other ſiniſter practices of ſuch Mi-
" niſters of State, as have an Evil Influence
" upon the Government. When the King
" calls his Parliament together, to be wit-
" neſſes of his actions, and privy to his in-
" tentions; it may certainly be believed he
" has not the leaſt thought diſagreing with
" the happineſs and ſecurity of the King-
" dom, and when Parliaments in their firſt
" Elections ſit, full and free (as in all rea-
" ſon Honor and Religion they ought to be)
" things may be ſo carried as will give no
" leſs content to all good Men then they
" wiſh or expect, for to overaw the freedom
" of the Houſes of Parliament or to weak-
" en their Juſt Authority by any violent
" Impreſſions upon them is a deſign unwor-
" thy of the King who ſhall not need ſo

rough

" rough assistance, if he have Reason and Justice of his side. The King should resolve to " Reform, what by free and full advise in " Parliament he is convinced to be amiss " to grant, whatever his Reason and Conscience tels him is fit to be desir'd. And " if any person durst to be so Impudent as " to move the King to alter his Laws, he " ought to put a mark upon such a Man, " as from which all posterity might know " his Intention was ever to Govern by the " Law and No otherways. Let Right Religion (in which all are most nearly concerned) and without care of which they " must not look for Gods blessing to be " vindicated and preserved, Let the Kings " Honor and Rights (which have an Inseperable relation with the subjects Interest,) " be asserted, Let the subjects Liberties Property and Priviledg (without which a " good Man should not desire to be a King) " be secured and confirm'd, and there is " nothing the Parliament can advise the " King to, wherein he should not meet them. " That together they may inform posterity. " how much their trust and confidence in " each other is a better expedient for the " peace and preservation of the Kingdom " then fears and jealousies.

" Now such a Parliaments as may be " duly serviseable to these great and publick " Ends, I pray God send the Nation, for " the unexpressible comfort and security of " the Monarch and the e Realms. *usque in* " *secula seculorum* Amen.

EPILOGUS LECTORI.

WHEN the horrid and prodigious Wen, or rather Monſter of *Roman* Rule and Uſurpation, (that had ſo long deformed, and almoſt defaced the beauty and luſtre of the Temporal Power) became ruined under the Juſtice of its doom, and utterly aboliſhed; and the Monarchy and ſecular Government reſtored to its juſt extent of Soveraignty and Juriſdiction, it might have raiſed an enquiry, worthy deliberation (before the high Commiſſion or Conſiſtory, were reared out of the former rubbiſh.) Whether from true reaſon of State, which is the Art of Governing to the beſt advantage for King and people: An Eccleſiaſtick State or Policy, ought to have been erected and entertained, or a Goſpel-Chriſtian Liberty permitted and allowed. I do not intend a Volume, altho the ſubject matter doth both require and deſerve it, but ſhall labour to give an impartial account in little, of the policy and practice of ſeveral ages, for the reſolving the point in queſtion, and which I propoſe under the following conſiderations.

1. Of Religion, as Heathen under Heathen Rulers.

2. As Chriſtian, under Heathen Governours.

3. As Chriſtian, under Chriſtian Magiſtracy.

1. The heathen potentates that ſtudied

all the ends and intents of Dominion, and ſecured themſelves with all expedience, that could any way, improve the ſame, never thought their Government concerned in the Queſtions of Religion. For when the Philoſophers of old ſeparated themſelves into ſundry parties, and were divided in their Sentiments in the moſt Weighty matters and concernment of their Religion, and their Gods. And that thoſe their Opinions Variouſly Influenc'd the People (Nor were there fewer Sects in *Athens* then are now in *London* or *Amſterdam*) yet the variety in Opinion begot no Sedition or Civil warr in *Greece*, nor did the more ſtrong and numerous party ſet up an inquiſition and high Commiſſion or Committee againſt the reſt, every Man enjoyed his own perſwaſion more than either his Goods or Wife.

The ſame likewiſe happened in the Religion of the Antients and though ſeveral Cittys addreſs'd their worſhip to ſeveral Deitys yet we read not any War, fomented or occaſioned for their difference in Religion.

The Poets have Introduc'd the Gods contending for Common-wealths and Empire, but never Common-wealths in War or Controverſy for their Gods.

This quiet and happineſs (which to the ſhame and ſcandal of the Chriſtian name) was enjoyed 400 years, among the Heathen, continued ſo long and uninterrupted, becauſe every Man following the Rules of his own judgment, allowed that liberty to others he found ſo neceſſary for himſelf; The Re-

ligion during this period was all of a piece although not Uniform.

2. But 2. when in fulneſs of time according to Gods Eternal purpoſe and decree, our Bleſſed Saviour and *Meſſias* Came in the fleſh, and owned himſelf the Auther of a new Religion. The Emperor *Tiberius* the moſt jealous in point of State and Prerogative of all the *Roman* Emperors.

Though he underſtood our Saviour was the Head of that new Sect and that Great multitudes followed him, yet did the Growth of Chriſtianity never increaſe his care of Empire at *Rome*, nor trouble his ſleep at *Capria*. Neither was *Pontius Pilate* (though a moſt Cruel and Unjuſt Judg) conſenting to his Execution, though the Crimes objected to him by the High Prieſts, Scribes &c. Run ſo high as that he made himſelf a King, denied Tribute unto *Caſar*, and in the Language of our day, threatned him that if he let him go he was not *Caſar*'s Friend, but he diſcerned their envy, and declared he found no fault in him.

The Martyrdom of *Stephen* was an Act of the High Prieſts &c. ſo was the Subornation of the fals Teſtimony againſt him, and the ſtirring up the Rabble in a Brutiſh and Riotous manner to execute their Cruelty, there was no interpoſing of the Civil Authority in the buſineſs of Religion, or any diſturbance to the State ſuggeſted from his Doctrine. No otherways the ſuffering of *John* under *Herod* though he knew that multitudes went out of *Jeruſalem* to be baptized of him, yet when he heard him, he

did

did many things and heard him gladly, and was exceding ſorrowful at his Death, which Princes ſeldom are of Men who lived to their jealouſy and danger.

But the concurrent judgment of three conſiderable diſintereſted perſons in favor of Chriſtianity may atteſt the reaſonable practice of the Magiſtrate in matter of Religion The 1. was of *Gamaliel* deputy of *Achaia*, and Town-cleark of *Epheſus* &c. where *Paul* was proſecuted by the High Prieſts before his ſeat of juſtice, it was his Opinion on Beſt experience that the unblameable ſect of Chriſtianity might ſafely and ought to be left to ſtand or fall by Gods providence, under a free tolleration of the Magiſtrate. Act. 5.38.

The next was *Gallia* a *Roman* deputy, The Jewes at *Corinth* had hurried *Paul* to his Tribunal, laying the uſual charg againſt him, that he perſwaded Men to worſhip God contrary to the Law, he drove them away with this anſwer, if it was a matter of wrong or wicked Lewdneſs, Reaſon would that he ſhould bear with them, but if it be a Queſtion of Words and Names and of your Law, look ye to it, I will be Judg of no ſuch matters. His judgment was that to puniſh Chriſtians meerly for their Doctrine and practice, unleſs they were Malefactors otherways, was a thing out of the Magiſtrates province and altogether unreaſonable. Act. 18.14

3. The third Caſe was no leſs remarkable, *Paul* was appeald by *Demetrius* a Silverſmith and the reſt of the Fremen of that

Act 9. 25. to the end. Act. 23. Company (to whom the Jewes joyned to ad more weight unto the accuſation) who thus beſpoke the aſſembly, ye know that by this Craft we have our wealth, but that by *Paul*'s Preaching they be no Gods that be made with hands not only our Craft is in danger to be ſet at nought, but alſo the Temples of the great Goddeſs and Her magnificence, whom *Aſia* and All the World worſhip, ſhould be diſpiſed and deſtroyed. The recorder of the Citty (more moderate and wiſe than ſome would have been in that Office) refuſes to make Inquiſition upon that matter. Adviſes the People thoſe perſons were neither Robbers of their Churches, nor Blaſphemers of their Gods. And therfore if *Demetrius* and his Crafts-men, had any matter againſt them, the Law was open and it ſhould be determined in a lawful aſſembly, but that the whole Citty was in danger to be cal'd in Queſtion for that uprore, there being no cauſe whereby they might give account of that tumultuous concourſe. For it is matter of Right and Wrong betwixt Man and Man that the Juſtice of Government looks to, but that while Chriſtianity, was according to its own Principles carried on quietly it might ſo fall out that the diſturbers of it were guilty of a Riot and their great Citty of *Epheſus* deſerve to be fined for it. Such was the ſence of thoſe upon whom the Emperors then relied for the Government and Security of their Provinces, that they could not comprehend how quietneſs was ſedition or the Innocence of

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the Christian worship could be subject to forfeiture or penalty.

This was the undoubted practice in the days of many of the *Roman* Emperors for that according to Natural Right and the Apprehensions of all sober Heathen Governors, Christianity as a Religion was wholy exempt from the magistrates Laws or Jurisdiction, farther then any particular person, amongst them. Immorally transgres'd as others the common Rules of human Society. This is sufficiently attested in the Edict, and Instructions of *Trojan*, *Adrian*, *Antoninus*, *Aurelius*, &c. Mr. F. M. Hist.

But the Gentile Priests who dayly observed a decay in their Parishes, a neglect of their Sacrafices, adiminution of their profits, and a dayly Visible increase of that Religion did frequently solicit their persecution. Which was the rather occasion'd by themselves from a double mistake in their Religious conduct.

The administration of the Government of the Christian Church is much contended for have been Episcopal (and perhaps it was so) who had that appellation rather from their meere spiritual function then by jurisdiction from their consistorial Authority, for what See, what Chapter, what Dioces, what Government had they who exercis'd their Religion by stealth and in corners.

1. They were divided in Opinion which did scandalise their profession although it did not cause any ill Impression in the Heathen Magistrate, as may be infer'd from *Themistius* Speech to *Valens*. That they were Themistius to Valens.

not

not to wonder at the Diſſents in Chriſtian Religion, which were very ſmall, if compared with the Multitude and Crow'd of Opinions among the Gentile Philoſophers, for there were at leaſt 300 differences, and a very great diſſention there was amongſt them about their reſolutions unto which each ſeveral ſect, was as it were neceſſarily boun'd up and oblidged, and that God ſeem'd to intend more to illuſtrate his own Glory, by that divers and unequal variety of Opinion, to the end every each one might therefore ſo much the more reverence his Divine Majeſty, becauſe it is not poſſible for any one accuratly to know him.

2. Their ſecond error was they were aliend in affection and forfeited that Union by pride, envy and emulation: which ſhould have been their honor and ſecurity, inſomuch that the Heathens could object unto them that the Philoſophers all of them do agree in the ſame diſciplin, but do ſometimes differ in ſome part of the Opinions, that they Dogmatize in, but yet though they do diſſent in ſome niceties that each Sect obſerveth, they nevertheleſs reconcile themſelves again, for the ſake of that common profeſſion to which they have concurd, whereas after that the affaires of Chriſtians, were indulged with liberty, their overſeers degenerated into Luxury and Lazineſs, and proſecuted other with hatred and Contumely, when Biſhops ſet upon Biſhops and the People of one of them ſtirred ſedition againſt the People of another and horrible Hypocriſie and Diſſimulation ſprung up to the utmoſt

Euſeb in vit. Conſt. 6, 7.

Euſeb. lib. 3. 6. 1.

utmoſt, extremity of malice, and thoſe which ſeem'd the paſtors, Kicking underfoot the Rules of Piety, were Inflamed among themſelves with mutuall contention, and whilſt they minded nothing elſe but exagerate their Quarrels, Threats, Emulation, Hatred and Enmities, and earneſtly each of them purſued his ambition in a Tyrannical manner, they not only loſt their liberty and reputation, but brought upon themſelves the utmoſt of Calamity and Perſecution, The practices in theſe three Centuries were firſt manad'g by the High Prieſts, Scribes and Phariſees &c. only, oppoſing the Doctrin of their Law, and Phrophets, the conduct of their ſences, the atteſtation of the Words and Miracles of the *Meſſias*, nay rather then forego the honor, and quit the profit of their (then aboliſhed) Prieſt-hood, Marraine and Crucify their God and Founder.

Flectere ſi nequeant ſuperos Acheronta movebunt.

For 2*d.* finding their own pretences Inſufficient, they Aſſociate and Combine with the Gentile Prieſts their profeſſed Enemies, if poſſible to prevail to ſtir up and intereſt the Government in the Quarrel, appearing for the honor of the then eſteemed deity *Diana*, when nothing was Intended but Intereſt and *Mamon*.

3. By their preſident the Heathen Butchers, Poulterers, Chimney-ſweepers, Names fit enough for their Idolatrous Prieſt-hood, were taught *res ſuas agere*, to ſtudy by all baſe unjuſt and cruel Methods even to a cruel

Aruſpices extaſpices Pullarii Capnom.

cruel Methods to a tenth perſecution to ſupport their own Grandure and the State of their ſuperſtition.

4. Came the Biſhops or Overſeers of the People of God &c. *Scavientes in ſuos*, but their Character and Practices will be more fully expreſs'd in the third and laſt Obſervation.

3. We have now ſeen the Chriſtian Religion carry it ſelf thorough the ten perſecutions of the Heathen Powers, and approve it ſelf ſo far in the Merit of their favor, till at laſt cloathed with ſimplicity, ſupported by faith led by humility, and Armed with conſtancy, and regularly ſucceeded to the Monarchy in the perſon of *Conſtantin* the Great, the firſt Chriſtian Emperor, His piety and munificence unto the Church was ſupereminently great, he endow'd and enriched them with plentiful revenues infeoffed them with large poſſeſſions, and inveſted and admitted them into. (*Nec ſibi nec reipublicæ profuturum*) A joynt ſhare and participation of his Authority, *mutuum auxilium* the blind and lame Mans motto in *Alciat*, appropriated to their new conceived union, for policy thought her ſelf blind without the direction of Religion, and Religion found her ſelf lame without the ſupport of policy. But to ſum up this matter in the following inſtance (where his zeal forewent his wiſdom) he made them in an Aſſembled Councel this bewitching complement, God hath made you Prieſt, and hath given you power to judg me, and therfore it is in you to judg me Righteouſly, but you cannot be judged by any Men, it is God only, that can judg you, and

Ruffin. lib. 1. cap. 2.

and therefore reserve all your quarrels to his tribunal, for you are as Gods to me ; and it is not convenient, that a man should Judge of Gods, but he only of whom it is written. No wonder if after this the Bishops only called themselves, the Church and pretend to Monopolize the Holy Ghost, how justly he was punished, for his Blasphemous courtship, and ever since how Intollerably and incessantly his successors have been, affronted and assaulted in person and authority (not forgetting the unspeakable Outrages, Bloodsheds, Massacres occasioned by those People, who owe the Original of their clame to that deboyst charter) may be seen in the Historys of all Ages, of all places unto this day.

What were the effects succeding this late Ceremony (in these times by some yet Reverenced as primative) will appear from those 1st. that mention their profession, and 2ly. their practice. *Hillary* Bishop of *Poyters* thus discourses of the first. *We do nothing but write Creeds, that while we fight about words, whilst we raise questions about novelties, whilst we quarrel about things doubtful and about Authors, while we contend in parties, while there is difficulty in consent, while we Anathematise one the other, there is now none almost that is Christs? what a change there is in the last yeares Creeds? The first decree commands that* Homoousias, *should not be mention'd; the next does decree and publish* Homoousias, The *third* does *again* by *indulgence* excuse *the* word *Ousia as used* by *the fathers*, in *their* simplicity, the *fourth does not excuse* but *condem it*, *It is come to that at last, that nothing* *Hill. Bi: Poiters,*

nothing among us, or thoſe before, can remain ſacred or inviolable, we Decree every Year of our Lord a new Creed concerning God. Nay, every Change of the Moon our Faith is altered, we repent of our Decrees, we defend thoſe that repent of them, we Anathematiſe thoſe that we defended, and while we either condemn other Mens Opinions in our own, or our own Opinions in thoſe of other Men, and bite at one the other, we are now all of us torn in pieces.

2. As their profeſſion was corrupt ſo was their practiſe blameable. Their pride was now ſo great, no colours would ſatisfie and ſerve to adorn them, but Purple and Scarlet, ſuch their ambition as no ſhare in Power would content them, they aim'd at all; *Religio peperit divitias & filia devoravit matrem*, and then the ſorrowful influences of their authority did diſcloſe themſelves in the irregularity of their ambition, in the inveterateneſs of their contention, in the burthens of their impoſition, at laſt they broke out like a Plague Sore in open Perſecution: And that which was abhorred as Tyranny and Cruelty in the Heathens, if done by a Chriſtian, and Eccleſiaſtical hand, was allowed to be Church-Government, (the only Government by which the whole Earthly World has been, and is aſſaulted and diſcompoſed) and the care of a Dioceſs. So that we may conclude, had not the Almighty by his power and providence, preſerved to his ſervice the little inviſible and Catholick Church; and a people that always ſearched and believed the Scriptures, who made a ſtand by their Teſtimonies and Sufferings, the Creeds had deſtroy-

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ed the Faith, and the Church had ruined Religion.

Nothing is more contemptible or truly ridiculous than a Christian that walks contrary to his profession, and by how much any Man stands with more advantage in the Church for eminence, but disobeys the Laws of Christ, by that priviledge he is thereby, and deserves to be the more exposed.

Out of the *Mercato Vecchio* of the primitive ruins, there is a practise at this day endeavoured to beget in us a superstitious stupidity, as to believe that all the Church hath, must be *jure divino*, all that she saith, must be Gospel and Truth, and all that he doth is holy and just.

But because they knew that Christian Worship was free by the institution of its founder, and that some of their pretences and designs, could not warrantably be imposed without interesting the temporal powers they devised a Canonical state trap after the model of *Julians* Politicks, who endeavouring by edict to introduce some bordering *Pagan* Ceremonies among the Christians, rais'd this influence, that if Christians should obey his Laws he should be able to bring them about to something further which he had designed, but if they would not, then he might proceed against them without any hope of pardon, as Breakers of the Laws of the Empire, and decree against them as turbulent and dangerous to the Government. By which Stratagem at this day

Freemen lib. 5. cap. 6

(Laws

(Laws having been procur'd to the same end) those things which were at first proposed as things indifferent, are obtruded as oblidging to the Conscience, and those matters which they termed *Adiaphora* (and which it may be were at first offer'd by the Church, from very good reason to a religious use) became by this corrupt practice to do more hurt to the Church, then the use at first did good. For those laws that are only established as expedient for the Church, cannot be supposed longer to continue then while they quadrate with the conditions of the State and People, and that there redound less hurt to the Church and People by their veneration, then good by the abolishing thereof. *Nam Ecclesia debet facere sicut bonus medicus, ut si medicina (experientia docente) plus officiat quam prosit eam tollit, atque utinam idem esset in omnibus constitutionibus positivis.*

Guil. Digniff.

Whereas if Men would decline this forcible governing of Christianity, leaving it to its own simplicity and due liberty, but causing all Men to keep the Kings and Christs Peace amongst themselves, and towards all others; The good that would arise to the Christian Magistrate and the Church of God would be unaccountable, for I will once more affirm (with confidence) that all the Evils that have befallen the Christian Church, both before and since the Reformation (and of which some now too justly complain off) must be imputed to the severity of the Impositions of those Men, who have attained the ascendency

dency in the Eccleſiaſtical State, and with juſt Cauſe Vindicated their own reaſon; from the Tyranny of unneceſſary bonds, endeavor neverthelefs to lay them upon others, and tye Infallibility to what they think truth, and damnation to whatſoever they call error, but to draw towards a concluſion.

Tis moſt certain Chriſtian Religion has its Foundation in humility, the raiſing in Juſtice, and the continuance in peace out of which holy root can never grow ſuch rank weeds as Pride, Injuſtice, and Perſecution: And he may be a very good Chriſtian, who letting paſs all tranſcendent and ſwelling knowledg, glories only in this to know Chriſt Crucified, reſolves in this only to live to him only that died once for all, and deſires only this the fruition of a better life, by the merit of that precious Death: this is the Faith Hope and Charity of a Chriſtian, which three are all in him that is all in all in the works of our Salvation.

A care Chriſt had of his Church, and ſo he teſtified; a Governor he promiſed and ſo he performed; a Governor that ſhould ever comfort us, in all our Tribulations and Afflictions, and continue us in his truth, (the ſpirit of truth) to Direct and Guide us in all the ways of Godlineſs, Verity and Vertue, this Governor he ſent in a few days after his aſſention, other then this to Rule in Chief in the Inward Man the Church hath none, and he Ruleth ſtil, in the Hearts of her Children and Ever ſhall,

who has Intitled every Christian to the liberty of the Gospel as his Charter for the working out his own salvation,

The following Rationate taken out of the *Rubrick* of the *Geneva* service is not unworthy of thy perusal, as to the dispute of Ceremonies as follows.

Nous savons qu'on fait ailleurs b'eaucoup d'autres ceremonies, lesquells nous ne nions pas avoire estre fort antiennes: Mes pource qu' elles este invente's a plaisir, ou pour le moins; per quelque consideration legere, qui qu'l soit, puisq; elles ont este forgee's sans la parole de dieu: Dautrepart veu q; tant de superstitions en sont sorties, nous ne avons fait de difficulte de les abolire a fin qu'il n'yent plus nul empeachment, qui destournast le people d' aller droit ment a Jesus Christ: primierment, se que ne nous est comande de dieu est en nostre libertee, Davantage tout le q; ne sert de rien a edification, ne doit estre receau en legliſe, et si'el auait este introduit, el doit estre oste, per plus fort reason ce q; ne sert qu' a scandalizer, & est come Instrument d' Idallatrie et de fausses oppinions, ne doit estre nullement tollere, si non q; nous ne voulons pas estre plus sage q' dieu mesmee.

The Heathens indeed gave this unhappy Character of their Religion.

Lucretius. *tantum olim,*
Religio peperit scelerata atq; impia mala.

And the Poet representing that Barbarous superstition, practised by *Agamemnon* in the murther of his Daughter, concludes

Tantum religio potuit suadere malorum.

But the Christian Religion as Instituted by our

our Blessed Saviour, gives not only the safest and best Morall Instructions for the conduct of particular Men, but is the greatest security to Magistrates by the Obedience which it teaches and it fitted to Enjoy no less security under them by a practice conformable to that Doctrin. And were not the command to the Christian Magistrate mistaken (That he is not to be a Terror to good works but to Evil) as well as that to the Apostles misapplied, who only had Authority for Edification not destruction. Men need not complain as in the case of Zech. And one shall say unto him. what are these woundes in thy hands, then he shall answer those with which I was wounded in the house of my Friend, they that possess them slay them and Sin not, and they that sell them say Blessed be the Lord for I am rich, and their own Shepherds spare them not. But I pray and hope from the Wisdome and Christianity of the present guides of our Church, that they will have pity upon the King, whom they know against his natural Inclination, his Royal Intention, his many Declarations they have induc'd to more severities, then all the ages since the conquest will contain if summ'd up together that he may have calme days and nights, free from care and molestation, for as long as the People of God stand divided by so unjust and pernicious a Contention (as is administred from the Imposition of things burthensome and ceremonious) how can it be that he can have any ease in his own spirit, and grant

Rom. 13: 4. 6. 2 Cor. 10. 8. Zec. 13: 6. 7. Zec. 11. 5. A. M. Euseb. in vit. const. Luke 11. 17. 18. 19. Gal. 5. 15.

that he may see good agreement of you and all the rest of his People, that having laid aside all Animosities (you may profess that true Religion that ties Princes to their People in all lawful administration of justice, and the People to their Princes in all lawful performance of Allegiance, not countenancing it on the one side as a Cloak for ambition, or urging it on the other to any just occasion of discontent) you may rejoyce together and may all with one Voice give Laud and Glory for the common good agreement and liberty. And lastly in all humility I propose this to our great Senate (if these papers be so happy as to merit their perusal) That where they know there is one and the same God worshipped, one and the same faith Imbraced, one and the same spirit working love, and causing an unblameable conversation without any offence unto the State : that they will not suffer their Bretheren who concur in all these things with them (for ceremonies and things which some do call indifferent but others burthens) and which without offence to the State or Prejudice to the Church they may moderat or suspend to be thrust out of the Land or put of from their native Country or here at home to be maliciously persecuted and evill Intreated to the scandal and detriment of the Christian profession, & *crisis opifices rerum & mundi melioris origo.*

Plus debet quam solvit inops.
Sed hac mea mica est.

W. D.

F I N I S.